

**THE VILLAGES MASTER PLANNED DEVELOPMENT  
DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF BLACK DIAMOND, WASHINGTON and  
BD VILLAGE PARTNERS, L.P.**

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**Exhibits**

- Exhibit “A” – Project Boundaries and MPD Site Plan
- Exhibit “B” – Legal Description and Parcel Map
- Exhibit “C” – MPD Permit Approval
- Exhibit “D” – Summary of Prior Agreements
- Exhibit “E” – City of Black Diamond Municipal Code & Other City Standards
- Exhibit “F” – Traffic Monitoring Plan
- Exhibit “G” – Constraint Maps
- Exhibit “H” – MPD Project Specific Design Standards and Guidelines
- Exhibit “I” – High Density Residential Supplemental Design Standards and Guidelines
- Exhibit “J” – Construction Waste Management Plan
- Exhibit “K” – MPD Phasing Plan
- Exhibit “L” – Excerpts from Chapter 3 of MPD Permit Application
- Exhibit “M” – Mine Hazard Release Form

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Exhibit “N” –MPD Funding Agreement

Exhibit “O” – Stormwater Monitoring

Exhibit “P” – Green Valley Road Measures

Exhibit “Q” – Maple Valley Transportation Mitigation Agreement

Exhibit “R” – Covington Transportation Mitigation Agreement

Exhibit “S” – Potential Expansion Areas

Exhibit “T” – Impact Fees for Fire Protection Facilities dated 1-13-2011

**A. Parties, Date, Recitals, and Mutual Consideration**

This Development Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF BLACK DIAMOND, a non charter code city in the State of Washington, operating under the provisions of Chapter 35A RCW (“Black Diamond” or “City”) and BD Village Partners, L.P., a Washington limited partnership (“Master Developer”).

**RECITALS**

- A. The City includes large areas of undeveloped lands, and the City has spent many years evaluating and planning for future coordinated development of those lands.
  
- B. To strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic cost of development, the legislature of the State of Washington enacted RCW 36.70B.170 through 36.70B.210 (the “Development Agreement Statute”), which authorizes a local government to enter into a development agreement with the owner of real property within its jurisdiction. Under the Development Agreement Statute, “A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.” In addition, RCW 36.70B.170(3) defines “development standards” for a development agreement as including:

- (a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

- (b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

- (c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

- (d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- (e) Affordable housing;
- (f) Parks and open space preservation;
- (g) Phasing;
- (h) Review procedures and standards for implementing decisions;
- (i) A build-out or vesting period for applicable standards; and
- (j) Any other appropriate development requirement or procedure.

Pursuant to state law, development agreements are not development regulations but are required to be and this Agreement is, in fact, consistent with the City of Black Diamond's adopted development regulations.

- C. The City has adopted a process for review and approval of applications for a Master Planned Development Permit ("MPD Permit"), which process is contained in the City's MPD Permit development regulations codified at Black Diamond Municipal Code ("BDMC") Chapter 18.98 (attached as Exhibit "E"). The City's process for review and approval of a MPD Permit includes the requirement for a development agreement that shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD Permit approval.
- D. The City has also adopted a process for review and approval of development agreements, which process is codified at BDMC Ch. 18.66 (Exhibit "E"). This Agreement has been processed, considered and executed in accordance with the City's development regulations in BDMC Chapter 18.66 (Exhibit "E"), and state law requirements, including RCW 36.70B.170 through .210. Identical copies of this

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Development Agreement were submitted and processed under application numbers PLN10-0020 and PLN11-0013.

- E. The Master Developer owns certain real property consisting of approximately 1,196 acres located in the City of Black Diamond, as generally diagrammed in Exhibit "A", the MPD Site Plan, and more particularly described in Exhibit "B" (the "Villages Property").
- F. Consistent with BDMC Chapter 18.98 and the City's adopted MPD Framework Design Standards and Guidelines, the Master Developer designed The Villages MPD on the Villages Property to utilize the natural land forms, including protection of wetlands and open space areas, to define a compact and clustered development pattern. The City's MPD Permit process allows the Villages Property to be developed in a thoughtful and fully integrated manner and provides certainty to the City, existing and future residents, and the Master Developer. The Villages MPD community design includes a wide variety of housing, shopping and recreational opportunities. The Villages MPD also includes a comprehensive system of Parks, Open Spaces and trails that will further connect and integrate the clusters of development and promote the natural beauty of the Project Site.
- G. The City approved the Master Developer's MPD Permit Application subject to certain conditions and desires to enter into this Agreement. This Agreement will, among other things, provide for the conditions of MPD Permit Approval to run with the land that is the subject of the MPD Permit Approval and bind the Master Developer's heirs, successors and assigns; provide greater certainty about the character and timing of residential and commercial development within The Villages MPD; provide for the orderly development of The Villages MPD on a comprehensive basis consistent with the MPD Permit Approval (copy attached as Exhibit "C"); allow for timely mitigation of probable significant adverse environmental impacts; provide services appropriate for development of The Villages MPD; encourage an economic and employment base within the City; contribute to the City's fiscal performance; and otherwise achieve the goals and purposes for which the MPD permit development regulations (BDMC Ch. 18.98) (Exhibit "E") and the ordinance approving the MPD Permit Application were enacted.

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H. The Master Developer desires to enter into this Agreement in exchange for the benefits to the City described in Recital G, together with other public benefits that will result from the development of The Villages MPD. Moreover, entering into this Agreement provides assurance to the Master Developer and its successors and assigns that: (i) any and all Implementing Projects necessary to build out The Villages MPD will be processed under the terms and conditions of The Villages MPD Permit Approval and this Agreement; (ii) that all Implementing Projects will be vested to and processed in accordance with the standards described in this Agreement and otherwise applicable federal law; (iii) that this Agreement and its standards will be in effect for 15 years with the possibility of further extension; (iv) that mitigation measures for the Implementing Projects, including protections to the natural environment and improvements to the built environment necessary to appropriately mitigate probable, significant adverse impacts and accommodate the build out of The Villages MPD, are fully described in this Agreement; and (v) that cost recovery mechanism are in place to assist the Master Developer with construction of public infrastructure when appropriate.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties hereby voluntarily mutually agree as follows:

**B. Terms**

**1.0 DEFINITIONS AND CONSISTENCY**

**1.1 DEFINITIONS**

All capitalized terms in this Agreement shall have the meaning set forth in Section 14, or, if not defined in Section 14, capitalized terms shall have the meaning set forth in the City of Black Diamond Municipal Code (“BDMC”) as attached hereto and incorporated herein as Exhibit “E”. If there is a conflict between the capitalized terms used in this Agreement and the terms defined in the BDMC, the definition set forth in the BDMC (Exhibit “E”) shall prevail.

**1.2 CONSISTENCY WITH LAW**

The Villages MPD is consistent with the City of Black Diamond Comprehensive Plan and City’s development regulations (Exhibit “E”). This Agreement is consistent with the terms and conditions of The Villages MPD Permit Approval.



## **2.0 PROJECT DESCRIPTION**

### **2.1 PROJECT ENVELOPE**

This Agreement governs and vests the development, use, and mitigation for The Villages Master Planned Development (“MPD”) legally described within Exhibit “B” and graphically shown on Exhibit “A”. Land within the boundaries of The Villages MPD shown on Exhibit “A”, together with the associated off-site improvements, shall be physically developed only pursuant to the terms and conditions of this Agreement.

### **2.2 PROJECT ELEMENTS**

The Villages MPD includes a mix of the following uses: residential, Commercial, Office, Light Industrial, Retail, educational, civic, Recreational Uses, trails and Open Space on 1,196 acres. This mix of uses will be comprised of the following, except as may be modified pursuant to Section 10.4.2: a maximum of 4,800 Dwelling Units (3,600 Single Family (MPD-L and MPD-M) and 1,200 Multi-Family (MPD-H and MPD-M) Dwelling Units; a maximum of 775,000 square feet Floor Area of Commercial/Retail/Office/Light Industrial uses, which includes 325,000 square feet of destination and Neighborhood Commercial uses and 450,000 square feet of Office and Light Industrial uses; multiple school sites, public and civic uses as described in part by the School Agreement; and at least 481.4 acres of Open Space; and other Recreational Uses.

### **2.3 MPD SITE PLAN AND PARCEL BOUNDARIES APPROXIMATE**

**2.3.1** The MPD Site Plan, attached hereto as Exhibit “A” and Figure 3-1 in Exhibit “L” are derived from a scaled survey, but are at too small a scale to depict surveyed boundaries on the ground. Accordingly, the Development Parcel boundaries and their associated acreages shown on Exhibit “A” and/or Figure 3-1 in Exhibit “L” are approximate. A large version of the MPD Site Plan, with surveyed exterior boundaries and sensitive areas, shall be kept on file with the City. Surveys of internal Implementing Project boundaries will be submitted with Implementing Project applications. The Development Parcel boundaries shown on the MPD Site Plan may be adjusted and/or consolidated pursuant to the processes set forth in Sections 4.4, 10.4.1, 12.8.3, and/or 12.8.14 of this Agreement, so long as the general character, Open Space and Density of the MPD Site Plan is implemented and all open space minimum requirements are met.

**2.3.2** The boundaries and categories of sensitive areas, as shown on the scaled Constraints Map contained in the section entitled “Existing Conditions” of the MPD Permit Application and attached hereto as Exhibit “G,” are based on actual field data presented in The Villages Final Environmental Impact Statement (“EIS”) dated December 2009. The City and Master Developer both agree to the boundaries, categories, and information set forth in the Constraints Map, attached hereto as Exhibit “G”. (The full size version of the Constraints Map shall be kept on file with the City.) Sensitive areas and their buffers may be modified from those shown on Exhibit “G” only as allowed by and in compliance with the City’s Sensitive Areas Ordinance (SAO). See Section 8.0, Sensitive Area Standards for additional discussion of sensitive areas. A copy of the SAO is contained in Exhibit “E”.

### **3.0 PRIOR AGREEMENTS**

#### **3.1 EFFECT OF DEVELOPMENT AGREEMENT**

Annexation of several portions of the property included in The Villages MPD was preceded by and subject to several multi-party agreements, including:

- A. The Black Diamond Urban Growth Area Agreement between the City of Black Diamond, King County, Plum Creek, and Palmer Coking Coal Company dated December 31, 1996 (“BDUGAA”);
- B. The Black Diamond Area Open Space Protection Agreement between Plum Creek Land Company, the City of Black Diamond, King County and Cascade Land Conservancy dated June 6, 2005 (the “Open Space Agreement”);
- C. Black Diamond Ordinance No. 515 dated December 5, 1994;
- D. The Pre-Annexation Development Agreement for the West Annexation Area between Plum Creek Land Company and the City of Black Diamond dated December 8, 2005 (the “West PAA”); and
- E. The Pre-Annexation Development Agreement for the South Annexation Area between BD Village Partners LP and City of Black Diamond dated August 20, 2009 (the “South PAA”).

These agreements are hereinafter collectively referred to as the “Prior Agreements.” The Prior Agreements set forth pre-conditions for annexation of a portion of the Project Site, including requirements for dedication of open space, and development standards. A summary of the Prior Agreements is contained in attached Exhibit “D”. With respect to the property included in The Villages MPD, this Agreement fulfills and implements all provisions related to development standards, infrastructure, Open Space and land use within The Villages MPD contained within the Prior Agreements. If the property identified in Black Diamond Ordinance No. 517 dated December 7, 1994, is included in The Villages MPD as an approved Expansion Parcel, Black Diamond Ordinance 517 shall be included herein as a Prior Agreement. To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control, as between the City and the Master Developer. This Agreement incorporates many of the terms of the Prior Agreements and to the extent any provision or

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requirement of a Prior Agreement is not included in this Agreement said provision or requirement shall be construed as not applicable to the Development of The Villages MPD.

## 4.0 LAND USE AND PROJECT ELEMENTS

### 4.1 MPD SITE PLAN

Per Condition of Approval No. 128 of the MPD Permit Approval, the City Council approved the following components of Chapter 3 entitled “Design Concept and Land Use Plan” of the MPD Permit Application: (i) the Land Use plan map (Figure 3-1, as updated July 8, 2010); (ii) description of categories (beginning on page 3-18); a maximum of 4,800 total residential units and 775,000 square feet of commercial space; and target densities (Table 3.2). These approved components of Chapter 3 are attached hereto and incorporated herein by reference as Exhibit “L”.

As provided in Condition of Approval No. 128 of the MPD Permit Approval, “all other specifics shall be resolved through the Development Agreement process.” Since the date of the MPD Permit Approval, the Master Developer has added additional detail to, and further refined, Figure 3-1 (see Exhibit “L”). This more detailed and specific figure is the MPD Site Plan attached hereto as Exhibit “A.” Neither the Land Use Plan Map shown at Exhibit “L” nor the MPD Site Plan shown at Exhibit “A” is a surveyed map; the scale of each exhibit prevents that level of detail. The MPD Site Plan shown on Exhibit “A” refines the Design Concept and Land Use Plan in Exhibit “L” to shift and improve road alignments to further minimize impacts on sensitive area buffers, to reflect more accurately, sensitive area buffer widths, to show possible lot layouts, building footprints, parking and circulation areas, and to show the vacation of certain right-of-way. The lot layouts, building footprints, parking and circulation areas shown on Exhibit “A” are only conceptual and may be modified pursuant to Implementing Projects (e.g., subdivisions and binding site plans) without an amendment to this Agreement.

Pursuant to Condition of Approval No. 128 of the MPD Permit Approval, further specificity is provided in Table 4-1 below which shows the Dwelling Unit range, range of commercial/office/retail/light industrial square footage, and anticipated additional possible uses of each Development Parcel in The Villages MPD. The data included within this Table 4-1 may only be modified pursuant to the MPD Site Plan amendment processes outlined in Section 4.4 below.

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**Table 4-1**

| Site Plan Parcel ID | Site Plan Phase | Range of Res'l Units for Parcel <sup>1</sup> | Square Feet Range for Commercial/ Office/Retail on Parcel | Additional Possible Uses <sup>2</sup> |
|---------------------|-----------------|--|---|---------------------------------------|
| V1                  | 1B              | 59-79  | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V2                  | 1B              | 41-54  | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V3                  | 1B              | 52-72  | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V4                  | 1B              | 18-25  | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V5                  | 1B              | 40-93  | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V6                  | 1B              | 53-123                                       | N/A   | E, F, G, H, I, J <sup>3</sup>         |
| V7                  | 1B              | N/A  | 86,000 - 344,000 SF                                       | A, B, C, E, F, G, H <sup>3</sup>      |
| V8                  | 1B              | N/A  | 61,000 - 240,000 SF                                       | A, B, C, E, F, G, H <sup>3</sup>      |
| V9                  | 1B              | N/A  | 46,000 - 183,000 SF                                       | A, B, C, F, G, H                      |
| V10                 | 1A              | 88-204                                       | N/A   | E, F, G, H, I, J                      |
| V11                 | 1A              | 59-106                                       | 64,000 – 257,000 SF                                       | A, B, C, F, G, H                      |
| V12                 | 1A              | 99-178                                       | 108,000 – 431,000 SF                                      | A, B, C, F, G, H                      |
| V13                 | 1A              | 121-167                                      | N/A   | E, F, G, H, I, J                      |
| V14                 | 1A              | 27-63  | N/A   | E, F, G, H, I, J                      |
| V15                 | 1A              | 28-55  | N/A   | E, F, G, H, I, J                      |
| V16                 | 1A              | 102-136                                      | N/A   | E, F, G, H, I, J                      |
| V17                 | 1A              | 57-122                                       | N/A   | E, F, G, H, I, J                      |
| V18                 | 1A              | 148-197                                      | N/A   | E, F, G, H, I, J                      |
| V19                 | 1A              | 66-88  | N/A   | E, F, G, H, I, J                      |
| V20                 | 2               | 114-228                                      | N/A   | E, F, G, H, I, J                      |
| V21                 | 1A              | 0-0  | N/A   | E                                     |
| V22                 | 2               | 84-112                                       | N/A   | E, F, G, H, I, J                      |
| V22-S               | 2               | 23-30  | N/A   | E, F, G, H, I, J                      |
| V23                 | 2               | 56-111                                       | N/A   | E, F, G, H, I, J                      |
| V24                 | 1A              | 66-92  | N/A   | E, F, G, H, I, J                      |
| V25                 | 2               | 77-106                                       | N/A   | E, F, G, H, I, J                      |
| V26                 | 2               | 25-34  | N/A   | E, F, G, H, I, J                      |
| V27                 | 2               | 231-308                                      | N/A   | E, F, G, H, I, J                      |
| V28                 | 2               | 229-305                                      | N/A   | E, F, G, H, I, J                      |
| V29                 | 2               | 64-127                                       | N/A   | E, F, G, H, I, J                      |
| V30                 | 2               | 48-96  | N/A   | E, F, G, H, I, J                      |
| V31                 | 2               | 117-156                                      | N/A   | E, F, G, H, I, J                      |

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| Site Plan Parcel ID | Site Plan Phase | Range of Res'l Units for Parcel <sup>1</sup> | Square Feet Range for Commercial/ Office/Retail on Parcel | Additional Possible Uses <sup>2</sup> |
|---------------------|-----------------|--|---|---------------------------------------|
| V32                 | 3               | 21-29  | N/A   | E, F, G, H, I, J                      |
| V33                 | 3               | 9-13   | N/A   | E, F, G, H, I, J                      |
| V34                 | 3               | 164-218                                      | N/A   | E, F, G, H, I, J                      |
| V35                 | 3               | 18-24  | N/A   | E, F, G, H, I, J                      |
| V36                 | 3               | 33-66  | N/A   | E, F, G, H, I, J                      |
| V37                 | 3               | 101-202                                      | N/A   | E, F, G, H, I, J                      |
| V38                 | 3               | 80-159                                       | N/A   | A, E, F, G, H, I, J                   |
| V39                 | 3               | 50-101                                       | N/A   | A, E, F, G, H, I, J                   |
| V40                 | 3               | 61-82  | N/A   | A, E, F, G, H, I, J                   |
| V41                 | 3               | 140-187                                      | N/A   | A, E, F, G, H, I, J                   |
| V42                 | 3               | 55-76  | N/A   | A, E, F, G, H, I, J                   |
| V43                 | 3               | 10-13  | N/A   | A, E, F, G, H, I, J                   |
| V44                 | 3               | 20-26  | N/A   | A, E, F, G, H, I, J                   |
| V45                 | 3               | 23-30  | N/A   | A, E, F, G, H, I, J                   |
| V46                 | 3               | 10-13  | N/A   | A, E, F, G, H, I, J                   |
| V47                 | 3               | 35-49  | N/A   | A, E, F, G, H, I, J                   |
| V48                 | 3               | 90-180                                       | N/A   | A, E, F, G, H, I, J                   |
| V49                 | 3               | 26-53  | N/A   | E, F, G, H, I, J                      |
| V50                 | 3               | 0-0  | N/A   | E                                     |
| V51                 | 3               | 60-121                                       | N/A   | E, F, G, H, I, J                      |
| V51-S               | 3               | 10-20  | N/A   | E, F, G, H, I, J                      |
| V52                 | 3               | 33-66  | N/A   | E, F, G, H, I, J                      |
| V53                 | 3               | 43-86  | N/A   | E, F, G, H, I, J                      |
| V54                 | 3               | 84-112                                       | N/A   | E, F, G, H, I, J                      |
| V55                 | 3               | 79-110                                       | N/A   | E, F, G, H, I, J                      |
| V56                 | 3               | 89-178                                       | N/A   | E, F, G, H, I, J                      |
| V57                 | 3               | 0-0  | N/A   | E                                     |
| V58                 | 3               | 0-0  | N/A   | E                                     |
| V59                 | 3               | 42-83  | N/A   | E, F, G, H, I, J                      |
| V60                 | 3               | 18-36  | N/A   | E, F, G, H, I, J                      |
| V61                 | 3               | 100-199                                      | N/A   | E, F, G, H, I, J                      |
| V62                 | 3               | 8-15   | N/A   | E, F, G, H, I, J                      |
| V63                 | 3               | 31-62  | N/A   | E, F, G, H, I, J                      |

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| Site Plan Parcel ID | Site Plan Phase | Range of Res'l Units for Parcel <sup>1</sup> | Square Feet Range for Commercial/ Office/Retail on Parcel | Additional Possible Uses <sup>2</sup> |
|---------------------|-----------------|--|---|---------------------------------------|
| V64                 | 3               | 14-27  | N/A   | E, F, G, H, I, J                      |
| V65                 | 3               | 12-25  | N/A   | E, F, G, H, I, J                      |
| V66                 | 3               | N/A  | 82,000 – 326,700 SF                                       | A, B, C, D, E, F, G                   |
| V67                 | 3               | N/A  | 130,000 – 522,000 SF                                      | A, B, C, D, E, F, G                   |
| V68                 | 1B              | N/A  | 52,000 – 209,000 SF                                       | A, B, C, D, E, F, G                   |
| V69                 | 1B              | N/A  | 51,000 – 205,000 SF                                       | A, B, C, D, E, F, G                   |
| V70                 | 3               | N/A  | 51,000 – 205,000 SF                                       | A, B, C, D, E, F, G                   |
| V71                 | 3               | 117-162                                      | N/A   | E, F, G, H, I, J                      |

1. MPD-L results in 4 – 8 du/acre. MPD-M results in 7 – 12 du/acre. MPD-H results in 13-18 du/acre. MPD-H (18-30) results in 18 – 30 du/acre.
2. Additional uses as described below:
  - A. Neighborhood Commercial – NC (BDMC 18.36.020-030 Exhibit “E”)
  - B. Community Commercial – CC (BDMC 18.38.020-030 Exhibit “E”)
  - C. Town Center – TC (BDMC 18.40.020-030 Exhibit “E”)
  - D. Industrial – I (BDMC 18.44.020-030 Exhibit “E”)
  - E. Public – PUB (BDMC 18.46.020-030 Exhibit “E”)
  - F. Accessory Uses and Structures (BDMC 18.030-060 Exhibit “E”)
  - G. Temporary Uses (BDMC 18.52.020-040 Exhibit “E”)
  - H. Home Occupations (BDMC 18.54 Exhibit “E”)
  - I. Accessory Dwelling Units (BDMC 18.56 Exhibit “E”)
  - J. Major and Minor Utility Facilities
3. The identification of these additional possible uses shall not preclude or otherwise conflict with the Enumclaw School District’s intended use of these parcels for a high school, notwithstanding Section 4.4.7 below, should a portion of these parcels be transferred to the Enumclaw School District under the terms of the School Agreement.

## 4.2 TOTAL NUMBER OF DWELLING UNITS

As approved by Condition of Approval No. 128 of the MPD Permit Approval, the total number of Dwelling Units allowed on the Project Site is 4,800 Dwelling Units. The predominant housing type will be Single Family residential. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 136 of the MPD Permit Approval, the Dwelling Unit mix is 3,600 Single Family units (MPD-L and MPD-M) consisting of Single Family detached, courtyard homes, Single Family attached buildings containing four (4) or fewer units, and Cottages; and 1,200 Multi-Family Units (MPD-M and MPD-H) consisting of townhomes and stacked flats.

Live/Work Unit locations are identified on the MPD Site Plan. The Project Site consists of 1,196 acres, of which at least 481.4 acres of Open Space shall be provided.

### **4.3 TOTAL AMOUNT OF NON-RESIDENTIAL DEVELOPMENT**

As approved by Condition of Approval No. 128 of the MPD Permit Approval, the total square feet of non-residential Development allowed on the Project Site is 775,000 square feet of Floor Area. Except as may be modified by Section 10.4.2 and pursuant to Condition of Approval No. 136 of the MPD Permit Approval, the mix is 325,000 square feet of Commercial (Mixed Use, Retail, and neighborhood commercial) and 450,000 square feet of Office and Light Industrial. Except as may be modified by Section 10.4.2, Light Industrial shall comprise no more than 200,000 square feet. Public Uses and schools as identified in the School Agreement shall not count towards the total allowed square feet of non-residential Development.

### **4.4 MPD SITE PLAN AMENDMENTS**

The following future MPD Site Plan amendments are allowed pursuant to the process and standards found in Section 12 of this Agreement. Pursuant to Condition of Approval No. 133 of the MPD Permit Approval, the frequency of MPD Site Plan amendments is limited to once per calendar year and shall be requested by the Master Developer by June of each year, with the exception of year one, when an amendment may be requested later than June, and except as noted below. MPD Site Plan amendments shall not allow Development of more Dwelling Units or square feet of non-residential Development than the total amounts permitted under Subsections 4.1 and 4.2.

**4.4.1** The residential density ranges (i.e., MPD-L, MPD-M, and MPD-H) of any Development Parcel can be adjusted one category up or down pursuant to the MPD Permit Approval Minor Amendment process outlined in Subsection 12.8.14. For example, MPD-L may move up to MPD-M, or MPD-H may move down to MPD-M. In no instance may a Development Parcel move up or down more than one density range from its original designation as depicted on Exhibit "A" unless a Major Amendment to the MPD Permit Approval is approved pursuant to BDMC 18.98.100 (Exhibit "E").

**4.4.2** Pursuant to Conditions of Approval Nos. 132 and 161 of the MPD Permit Approval, no Development Parcel abutting the perimeter of the Project Site can increase its density range without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit “E”). Further, no Development Parcel can increase to MPD-H 18-30 du/acre without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit “E”).

**4.4.3** Any Development Parcel abutting or across a road from a Mixed Use designation as shown on Exhibit “A” may be changed to the Mixed Use designation pursuant to a Minor Amendment to the MPD Permit Approval Minor Amendment per Subsection 12.8.14(A) of this Agreement.

**4.4.4** Pursuant to Condition of Approval No. 130 of the MPD Permit Approval, any Development Parcel designated as Mixed Use can be converted to Live/Work Units pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A) of this Agreement.

**4.4.5** A Development Parcel that is designated as school in Exhibit “A”, but is not dedicated to the Enumclaw School District pursuant to the School Agreement, may revert to the MPD-M density range pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A). Or, the Master Developer may elect to keep the Development Parcel designated school and proceed with Development provided the proposed use is authorized in the City’s Public (PUB) zoning district per BDMC Ch. 18.46 (Exhibit “E”) without any amendment to the MPD Permit Approval or this Agreement. The Master Developer shall inform the Designated Official of its election by written notice prior to submitting an application for an Implementing Project on such a Development Parcel.

**4.4.6** MPD Site Plan amendments to Open Space areas as shown on Exhibit “A” shall be allowed with a Minor Amendment to the MPD Permit Approval, which may only be processed concurrently with the submittal to the City of an Implementing Project application and shall not modify the overall Open Space requirement set forth in Section 9.1. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4 above and may include converting entire Development Parcels to Open Space.

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**4.4.7** Any Development Parcel, or portion thereof, may be converted to School use pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A) of this Agreement. Pursuant to Condition of Approval No. 99 of the MPD Permit Approval, however, if any party submits an Implementing Project application that seeks to locate a high school as a conditional use within any lands designated on the MPD Site Plan (Exhibit “A”) for commercial/office/retail use, then the application for the Minor Amendment to MPD Permit Approval shall also include an updated fiscal analysis prepared by the Master Developer pursuant to Section 13.6 of this Agreement. Moreover, if this updated analysis shows a deficit, the Master Developer, not the Enumclaw School District, shall be required to mitigate the deficit pursuant to Section 13.6 of this Agreement.

**4.4.8** Although the Design Concept and Land Use Plan shown in Exhibit “L” was not a specifically surveyed map, approximate acreages were assigned to each Development Parcel to aid in understanding the Design Concept and Land Use Plan. The stated acreage of any Development Parcel may be increased or decreased concurrent with the City’s processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement. Typical reasons for altering the acreage of a Development Parcel include but are not limited to accommodating on the ground surveying, accommodating detailed engineering designs for necessary infrastructure, improving the location and/or access to a Park or active Open Space area, enhancing protections for a sensitive Open Space area, and providing better clustering, buffers, or trail connections between neighborhoods. The acreage of a Development Parcel may not be increased or decreased if doing so alters the maximum total residential units and square footage of commercial space, or target densities for the Project Site as a whole, as were approved in Condition of Approval No. 128.

**4.4.9** The road way alignments shown on the MPD Site Plan (Exhibit “A”) may be modified pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plan) without an amendment to the MPD Permit Approval or this Agreement. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4 above.

**4.4.10** Any other MPD Site Plan amendment (not listed above) may be processed as a Minor Amendment to the MPD Permit Approval provided the criteria outlined in BDMC 18.98.100(A)-

(H) (Exhibit “E”) are met; otherwise, a MPD Site Plan amendment constitutes a Major Amendment to the MPD Permit Approval.

#### **4.5 INTERFACE WITH ADJOINING DEVELOPMENT**

When an Implementing Project application for a Development Parcel along the Project Site perimeter is submitted, and the abutting property outside the MPD to such Development Parcel is already developed on that submittal date, then the Development Parcel is subject to the section of the MPD Framework Design Standards and Guidelines entitled “Interface with Adjoining Development,” which provides guidelines to ensure a transition between the Development within The Villages MPD that abuts Development outside the Project Site but within the City limits.

#### **4.6 EXPANSION PARCELS**

Pursuant to Conditions of Approval Nos. 134 and 162 of the MPD Permit Approval, any or all of the Expansion Parcels as set forth in Exhibit “S” may be developed during the Build-Out Period subject to the process and standards set forth in Sections 10 and 12 of this Agreement.

#### **4.7 ADDITIONAL USE STANDARDS**

##### **4.7.1 Construction/Field Offices**

Construction/field offices are allowed to be located within existing buildings or modular structures throughout the Project Site subject to the City’s approval. There is no time limit for such uses, provided that until the use is terminated, the use shall count towards the maximum amount of non-residential Development within The Villages MPD.

##### **4.7.2 Neighborhood Commercial Designed as Corner Stores**

Pursuant to Condition of Approval No. 128 of the MPD Permit Approval, the Neighborhood Commercial uses are the permitted uses authorized in the City’s Neighborhood Center (NC) zone as specifically outlined in BDMC 18.36.020 (Exhibit “E”). An Implementing Project application that includes Neighborhood Commercial cannot be approved by the City without a Minor Amendment of the MPD Permit Approval. The following additional criteria shall also apply to Neighborhood Commercial uses:

1. Automobile fueling stations, limited to four pumps, and limited to no more than four thousand square feet for a convenience store.
2. Parking areas shall not be located between the building and the street frontage. Parking should be accessed from a side street if available, or located to the side(s) or back of the retail uses. On-street parallel parking or head in angle parking in front of the retail uses is encouraged and may be included in counting towards the required parking.
3. Direct pedestrian connections from the sidewalk to the stores are strongly encouraged.
4. Drive-through facilities are not allowed.

#### **4.7.3 Accessory Dwelling Units (ADUs)**

The Villages MPD is limited to three hundred (300) Accessory Dwelling Units (ADUs) on the Project Site. The Master Developer is the only party that may submit ADUs applications for the Project Site unless the Master Developer assigns or transfers this right (or a portion thereof) to a third party. The City shall not accept an ADU application for the Project Site from a third party unless such application is accompanied by written approval from the Master Developer. Accessory Dwelling Unit applications must also be reviewed and approved by the DRC prior to submittal to the City for approval.

#### **4.8 PROCESS TO TRACK TOTAL DWELLING UNITS AND FLOOR AREA**

The Designated Official and Master Developer shall develop a process to track Dwelling Unit counts and non-residential square feet based on approved Construction Permits. Pursuant to Condition of Approval No. 129 of the MPD Permit Approval, Table 4-8-4 below shows the anticipated approximate number of Dwelling Units and non-residential square footage within each Phase of The Villages MPD. As part of the Annual Review described in the Funding Agreement (Exhibit "N"), the Designated Official and Master Developer shall confirm the number of Dwelling Units and amount of non-residential Development square footage that has been developed within The Villages MPD.

**Table 4-8-4 Target Unit Count by Phase**

| Phase        | Target Single Family Dwelling Units | Target Multi-Family Dwelling Units | Target Commercial/Office/Retail (Square Feet) | Total (Units) |
|--------------|-------------------------------------|------------------------------------|---|---------------|
| 1A           | 436                                 | 334                                | 200,000                                       | 770           |
| 1B           | 110                                 | 205                                | 320,000                                       | 315           |
| 2            | 1155                                | 165                                | 0   | 1,320         |
| 3            | 1899                                | 496                                | 255,000                                       | 2,395         |
| <b>Total</b> | <b>3,600</b>                        | <b>1,200</b>                       | <b>775,000</b>                                | <b>4,800</b>  |

#### **4.9 TRANSFER OF DEVELOPMENT RIGHTS**

To achieve the proposed Densities on the Project Site, the Master Developer shall purchase TDRs and transfer them to the Project Site. The phasing of the purchase and transfer of TDRs to the Project Site must be consistent with the process and requirements found in the City’s TDR and MPD Ordinances (Exhibit “E”). Pursuant to the MPD Ordinance, BDMC 18.98.040.A.18 (Exhibit “E”), The Village MPD’s phasing plan for the acquisition of TDRs must demonstrate that for each Phase, no more than 60% of the proposed residential Density is based upon the land area included in that Phase. Pursuant to Conclusion of Law No. 62 of the MPD Permit Approval, The Village MPD’s TDR phasing plan is set forth in Table 4-9 and demonstrates that the Master Developer’s proposed phasing of the purchase and transfer of TDRs meets the requirements of BDMC 18.98.040.A.18 (Exhibit “E”), since the ratio of base Density to planned Density for the land within each Phase is less than or equal to 60%. The Master Developer will update the TDR phasing plan, Table 4-9, as necessary and submit it to the City with subsequent Implementing Project applications. If the proposed Density for an Implementing Project application does not result in the utilization of more than 60% of the land area for the particular Phase in which the Implementing Project is proposed, TDRs are not required to be purchased.

The Master Developer and Designated Official shall work cooperatively to create an efficient process for TDR transactions consistent with BDMC Ch. 19.24 (Exhibit “E”). The Master Developer shall identify to the City a primary contact for TDR acquisitions. This TDR acquisition process shall be reviewed annually as part of the Annual Review as identified in Funding Agreement (Exhibit “N”).

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The Master Developer shall include a summary of “Base Density Used” and “TDRs Needed” with each Preliminary Plat application or Site Plan application submitted to the City, and these values shall be shown on such application’s cover sheet. The City may process and approve a Preliminary Plat or Site Plan subject to a condition requiring the Master Developer to demonstrate ownership of all TDRs required for the Preliminary Plat or Site Plan, but the City will not issue Utility Permits for any road or stormwater improvements for any division of a Preliminary Plat or Site Plan until the Master Developer has demonstrated ownership of any TDRs needed for that division of the Preliminary Plat or Site Plan. Any division of a Final Plat requiring TDRs will not be processed or approved until the Master Developer has acquired title to the needed TDRs and they have been assigned by the Master Developer to the applicable division of the Final Plat.

**Table 4-9. TDR Phasing Plan**

| <b>Phase</b>    | <b>Planned Density</b> | <b>Base Density used<sup>1</sup></b> | <b>TDRs needed</b> | <b>Percent of proposed Density based upon land area within that Phase</b> |
|-----------------|------------------------|--------------------------------------|--------------------|---|
| <b>Phase 1A</b> | 770                    | 452                                  | 318                | 59%   |
| <b>Phase 1B</b> | 315                    | 189                                  | 126                | 60%   |
| <b>Phase 2</b>  | 1320                   | 295                                  | 1025               | 22%   |
| <b>Phase 3</b>  | 2395                   | 993                                  | 1,407              | 42%   |

**Note 1**

- Phase 1A Base Density from Parcel D
- Phase 1B Base Density from Parcel C and Parcel B, 70 Dwelling Units of base Density transferred to Phase 2
- Phase 2 Base Density from Parcel E and Guidetti Parcel TDRs, plus 70 Dwelling Units base Density from Phase 1B
- Phase 3 Base Density from BDA, Parcel F-North, and Parcel G

**4.10 DEVELOPER IMPROVEMENTS**

The Villages MPD design and mitigation measures described in this Agreement, including the MPD Permit Approval and its Conditions of Approval in Exhibit “C”, mitigate any probable significant adverse environmental impact directly identified as a consequence of MPD Permit Approval and this Agreement. Additionally, some elements of the MPD Permit Approval and mitigation measures include provisions relating to system improvements identified in the City’s

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Comprehensive Plan (Exhibit “E”), for which the City might adopt impact fees under RCW 82.02.050 *et seq.* As designed and with full implementation of all the mitigation measures, The Villages MPD build-out will fully and adequately mitigate the probable significant adverse environmental impacts of The Villages MPD and, that through such mitigation measures, provisions will be made for: (i) the facilities needed to serve new growth as a result of The Villages MPD within the City and (ii) the Master Developer to construct or pay a proportionate share of the cost of completing certain system improvements. Unless otherwise provided elsewhere in this Agreement or in the MPD Permit Approval, the mitigation measures listed this Agreement and in Exhibit “C” are in lieu of the payment of any impact fees that the City has the authority to impose pursuant to RCW 82.02.050 *et seq.*, including any amendments thereto, such that no impact fees shall be imposed on any Implementing Project during the term of this Agreement except for those impact fees explicitly allowed in this Agreement. This section applies to the MPD Permit Approval and to City infrastructure and City fees associated with the Build-Out of the MPD. Nothing in this section applies to preclude subsequent environmental review of Implementing Projects under the State Environmental Policy Act (“SEPA”), and Implementing Projects are expected to undergo additional SEPA review.

## **5.0 ADDITIONAL BULK, LANDSCAPE AND SIGN STANDARDS**

Pursuant to Condition of Approval No. 135 of the MPD Permit Approval, the MPD Project Specific Design Standards and Guidelines and High Density Residential Supplemental Design Standards and Guidelines are attached hereto and incorporated herein as Exhibits “H” and “I”, respectively. The Engineering Design and Construction Standards also are attached hereto and incorporated herein in Exhibit “E”. This Section of the Agreement sets additional standards that impose restrictions beyond the City’s applicable codes on The Villages MPD Development. All Implementing Projects must comply with these standards and guidelines, as well as the MPD Framework Design Standards and Guidelines.

### **5.1 DRC REVIEW REQUIRED FOR DESIGN GUIDELINES AND STANDARDS**

The DRC shall review and approve each Implementing Project application, except for Utility Permits and permits for Schools as set forth in the School Agreement, for compliance with the MPD Project Specific Design Standards and Guidelines prior to submittal to the City for review and approval. The DRC’s approval shall be noted in each such application, which shall be submitted to the City for review and processing. In the event that the City determines that an Implementing Project application does not comply with Exhibits “H” and “I” or the MPD Framework Design Standards and Guidelines, or that the DRC has failed to provide approval, the Designated Official may require changes to or deny the application.

### **5.2 DIMENSIONAL STANDARDS**

Consistent with BDMC 18.66.020(A) (Exhibit “E”) and RCW 36.70B.170, Condition of Approval No. 144 of the MPD Permit Approval provides that: “Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement.” This subsection outlines the dimensional standards applicable within the Project Site consistent with the MPD Permit Approval to impose restrictions beyond the City’s applicable code provisions.

#### **5.2.1 Lot Size and Lot Width**

- A. The MPD Ordinance does not impose a minimum lot size. The minimum lot size for Detached Single Family is 2,200 sq. ft. The minimum lot size does not apply to

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alternative lot configurations per Section 5.2.6, Cottages, townhomes or Multi-Family. Lot sizes are dictated by product type, Setbacks, and other specific lot standards described in Section 5 of this Agreement.

- B. The minimum width of a flag lot is 14 feet for the portion of the lot that serves as access. One "flag" driveway may access up to two (2) lots.

**5.2.2 Residential Setbacks and Maximum Height**

**Table 5-2-1**

| Density Range  | Required Setbacks and Maximum Height <sup>6, 8, 9</sup> |  |                          |                                     |           | Maximum Building Height <sup>5,7</sup> |
|----------------|---|--|--------------------------|-------------------------------------|-----------|--|
|                | Front Yard @ Street <sup>1</sup> /Garage                | Front Yard @ Common Green <sup>1</sup> | Side Yard <sup>2,3</sup> | Side Yard @ Corner Lot <sup>4</sup> | Rear Yard |  |
| <b>MPD –H</b>  | 10'/NA  | 16'                                    | 7' <sup>10</sup>         | 10'                                 | 10'       | 45'                                    |
| <b>MPD – M</b> | 10'/20'   | 10'                                    | 5'                       | 10'                                 | 5'        | 45'                                    |
| <b>MPD – L</b> | 10'/20'   | 10'                                    | 5'                       | 10'                                 | 5'        | 45'                                    |

**Notes:**

1. Measured to property line.
2. Note that side yard Setback does not apply to common wall on townhome, duplex, other similar attached Dwelling Units or alternative lot configurations as provided in Subsection 5.2.7.
3. Use easements may be utilized for provision of private yards. Use easements shall not be used for building code fire separation distance.
4. Setbacks at corner lots with buildings with wrap around porches may be reduced to 5'.
5. Maximum building height may be exceeded by 10' for tower rooms less than 300 sq. ft., and distinctive architectural elements such as towers, cupolas and spires.
6. Table 5-2-1 does not apply to flag lots, see Section 5.2.5(F).
7. On at least one side of the building there shall be a 32' or lower accessible eave.
8. Access to escape and rescue windows shall be provided for in building design as required by the then-applicable City building code.
9. Buildings over 35' in height shall provide a minimum 7' by 12' permanent, useable staging area on at least one side of the building for fire access to the roof. The staging area shall be located adjacent to the accessible eave.
10. Single Family side yard Setbacks shall be a minimum of 5' in MPD-H.

All residential construction shall be designed in accordance with the then-applicable City building code.

Live/Work Units shall be provided with a NFPA 13 fire sprinkler system. The residential portion of the Live/Work Unit shall be provided with quick response sprinkler heads, with a separation between the residential and non-residential uses by a barrier, wall, lintel, or draft curtain.

**5.2.3 Allowed Encroachments into Setbacks**

- A. When a primary egress window on the second floor of a building is directly above an encroachment on the first floor of the same building, such encroachment in that location within the 5' side yard Setback shall be limited to eighteen inches (18") measured horizontally from the outside wall of the foundation.
  
- B. Uncovered decks, patios, walkways, and other minor structural elements less than 30 inches in height; and fences six (6) feet in height or less; are exempt from Setback requirements.
  
- C. Retaining walls and rockeries and other similar landscape features are allowed within Setbacks.
  
- D. Monument signs may be located within Setbacks.
  
- E. Encroachments shall only be allowed as long as a minimum thirty inch wide (30") access path at the ground level is maintained for emergency purposes. For example, decks may require stairs, or fences may require a gate.

**5.2.4 Measurement of Setbacks**

Setbacks are measured perpendicular from the property line to the outside wall of the foundation of a structure.

**5.2.5 Determining Residential Setbacks on Irregular Lots**

Irregular Lots are defined as lots that are non-rectangular, lots with three sides, or more than four sides, and require special measurement techniques in order to achieve the purpose of the specific Setbacks. The Designated Official may allow alternate Setbacks on irregular lots, other than those described below, in order to promote unique design opportunities.

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- A. Front Setbacks: Front Setbacks shall be measured from the property line that abuts the street from which the lot is addressed or takes primary public access. For an alley loaded lot, the front Setback is measured from the lot line furthest from the alley.
- B. Rear Setbacks: In the case of an irregularly shaped lot, a ten-foot line which is within the lot and parallel to and most distant from the front lot line shall be considered the rear lot line.
- C. Side Setbacks: All lot lines, which are not defined as front or rear lot lines, shall be considered side lot lines.
- D. Pie-Shaped Lots: Setbacks on pie-shaped lots shall be measured at the closest point between the proposed building and the angled lot line, perpendicular to that lot line.
- E. Cul-De-Sac Lots: Setbacks shall be taken from the nearest proposed foundation corner, and measured perpendicular to the property lines.
- F. Flag Lots: A flag lot is a lot so shaped that the building area (the “flag”) is not adjacent to the street or alley on which the lot fronts, and which includes an access strip (the “pole”) connecting the building area to the street or alley. Setbacks shall be applied at the enlarged area of the lot (“flag”), and all Setbacks shall be a minimum of five feet, except that one side of a two-story or taller building shall have a minimum 7’ Setback for fire access.

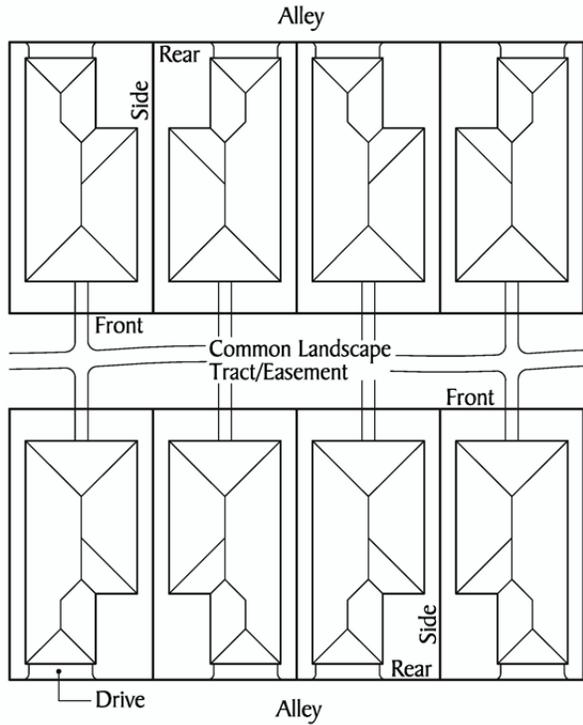
**5.2.6 Alternative Lot Configurations**

In order to promote creative and unique site designs, Alternative Lot Configurations are allowed within The Villages MPD. Alternative Lot Configurations include, but are not limited to:

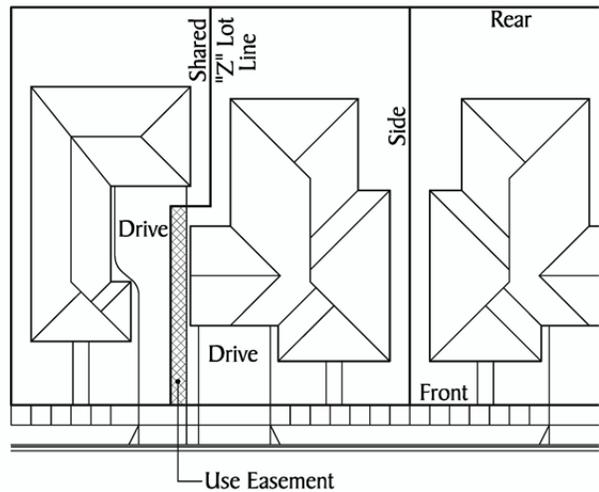
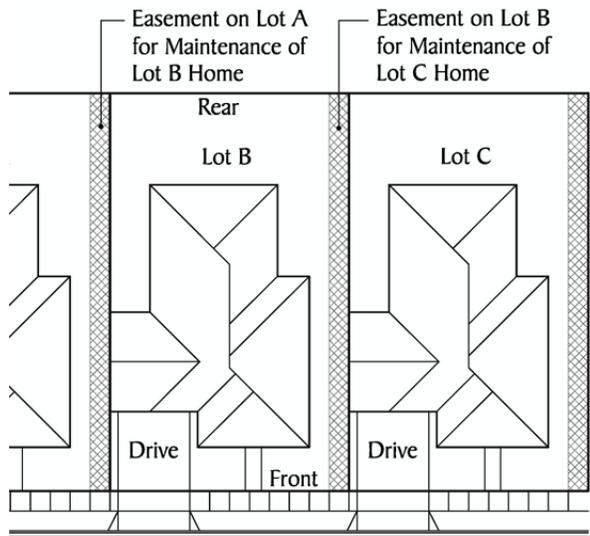
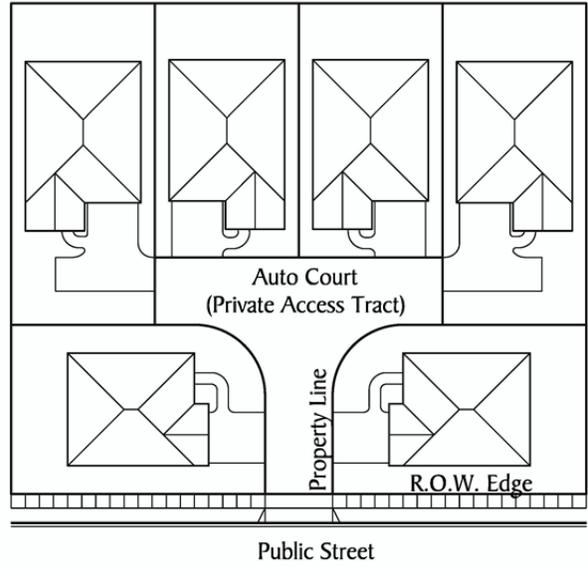
- 1. Zero lot line development
- 2. “Z” lot configuration
- 3. Common access easements/tracts configuration
- 4. Courtyard

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Common access easement/tract configuration



Courtyard



Zero lot line development

"Z" lot configuration

*Illustrative examples of some alternative lot configurations; not to scale*

**5.2.7 Floor Area Ratio (FAR)**

Consistent with BDMC 18.36.040(A)(1) (“structures without residential uses”), BDMC 18.38.040(A)(1) (“structures or sites without residential uses”), BDMC 18.40.040(B)(1) (“structures without residential uses”), BDMC 18.42.040, and BDMC 18.44.040 (Exhibit “E”) and pursuant to Condition of Approval No. 145 of the MPD Permit Approval, non-residential Implementing Projects within The Villages MPD shall not exceed the following Floor Area Ratio (“FAR”) standards:

1. Retail: FAR 1.0
2. Light Industrial: FAR 1.0
3. Commercial: FAR 1.0

**5.2.8 Non-Residential Uses: Setbacks and Height**

A. Setbacks for Mixed Use, Commercial/Office/Retail/Light Industrial, schools or Parks and Open Space Development shall be consistent with the International Building Code (IBC), DRC Design Guidelines, the MPD Project Specific Design Standards and Guidelines (incorporated herein as Exhibit “H”) and applicable MPD Framework Design Standards and Guidelines (Exhibit “E”) and subject to review by the Design Review Committee as established in Section 12.3.

B. Non-Residential Building Height

**Table 5-2-2. Non-Residential Building Height**

| <b>Site Plan Category</b> | <b>Max. Building Height*</b> |
|---------------------------|------------------------------|
| Mixed-Use                 | 45'                          |
| Commercial/Office/Retail  | 45'                          |
| Schools                   | 45'                          |
| Parks and Open Space      | 30'                          |
| Light Industrial          | 45'                          |

\* Maximum building heights do not apply to Major Utility Facilities.

### 5.3 PARKING STANDARDS

The standards for parking facilities are intended to promote vehicular and pedestrian safety and efficient land use. The standards in this section match or are in addition to those set by BDMC 18.80.030, 18.80.040, 18.80.045, 18.80.050, and 18.80.060 (Exhibit “E”).

#### 5.3.1 Minimum Parking Requirements

Parking shall comply with BDMC Chapter 18.80 (Exhibit “E”), and the additional standards provided below.

##### A. Residential Uses within the MPD-L, MPD-M and MPD-H Categories

Residential uses within the MPD-L, MPD-M and MPD-H density ranges shall provide off-street parking spaces pursuant to the chart found at BDMC 18.80.030(E) (Exhibit “E”). In addition, attached Dwelling Units less than or equal to four (4) Dwelling Units shall provide two spaces per unit. These requirements are restated here:

| Use   | Required Spaces Per Unit |
|---|--------------------------|
| Dwelling Unit, detached or attached less than or equal to four (4) Dwelling Units | 2                        |
| Dwelling Unit, attached more than four (4) dwelling units                         | 1.75                     |
| Multi-Family studio units   | 1                        |
| Senior Housing  | 0.75                     |

##### B. Mixed Use - Village Center

Pursuant to Condition of Approval No. 148 of the MPD Permit Approval, parking spaces shall be provided within the Village Center as follows, all other areas shall comply with the City’s parking standards, BDMC Chapter 18.80 (Exhibit “E”):

1. Commercial, Restaurant, Office, Institutional Use

Parking spaces shall be provided at a minimum ratio of 1 space per 500 square feet of floor area excluding mechanical areas and storage; unless modified through a shared parking agreement. Parking spaces need not be provided on

the same Development Parcel. Institutional Uses shall provide spaces as required under Subsection 5.2.1.C of this Agreement.

2. Hotel  
Hotel uses shall be provided a minimum of 0.75 spaces per room. These spaces may be shared with another use with non-competing hours of operation such as Office space.
3. Mixed -Use Residential  
Residential units, except for senior housing, in the Mixed Use designation shall be provided a minimum 1.5 off-street parking spaces per Dwelling Unit. Multi-Family studio units shall provide 1 off-street space per Dwelling Unit. Guest parking for residential uses shall be satisfied by on-street or shared lot parking with no specified number of spaces per Dwelling Unit.
4. Senior Housing  
Senior housing shall be provided a minimum 0.60 spaces per Dwelling Unit.

**C. Institutional Uses**

Institutional Uses shall provide the following minimum parking spaces unless a separate parking analysis for the specific use is provided to the City. These parking minimums match or exceed those set by BDMC 18.80.030 (Exhibit "E"):

1. Elementary Junior High/Middle School: 1.75 spaces per classroom
2. High School: 5 spaces per classroom

Religious facilities, community clubs, theaters, performing art centers and other similar facilities: (i) 1 space for every 4 fixed seats or 1 space for every 100 square feet of assembly space; plus (ii) 1 space for every 500 square feet of Office; and (iii) 1.75 spaces per classroom.

Daycare Center serving more than 12 children: 6 spaces plus 1 space for each required employee.

**D. Stacking and Loading Spaces**

1. As required under BDMC 18.80.045 (Exhibit “E”), stacking for six cars shall be provided for each drive-up window: each stacking space shall be a minimum of 15 lineal feet.
2. Loading spaces for Commercial, business park, and Light Industrial uses shall be provided pursuant to BDMC 18.80.040 (Exhibit “E”), except for Commercial uses located within Mixed Use designated areas.
3. Commercial buildings located within Mixed Use designated areas shall provide loading spaces as follows:
  - a. Uses taking access from Main Street shall not be required to provide off-street loading spaces.
  - b. Commercial uses between 5,000 and 25,000 sq. ft. in size, when located off of Main Street, shall provide a minimum of one (1) off-street loading space.
  - c. Commercial uses located off of Main Street greater than 25,000 sq. ft. in size shall provide a minimum of two (2) off-street loading spaces.
  - d. Dimensions shall be consistent with BDMC 18.80.040 (Exhibit “E”).

**E. Temporary Use, Major and Minor Utility Facilities and Recreational Uses**

Minimum parking requirements for Temporary Use, Major and Minor Utility Facilities and Recreational Uses will be determined by the Designated Official pursuant to the process established for certain conditional uses in BDMC 18.80.030(B) (Exhibit “E”).

**5.3.2 Parking Dimensions**

Parking dimensions shall meet or exceed the standards of BDMC 18.80.050(B)(3) (Exhibit “E”), as follows:

**A. Parking spaces shall be as follows:**

1. Standard space: 9 ft x 19 ft, including a permitted 2 ft overhang into non-pedestrian areas.

2. Compact space: 8.5 ft x 16 ft, including a permitted 2 ft overhang into non-pedestrian areas; up to 50% of total required spaces may be compact subject to Designated Official approval.
  3. Motorcycle space: 4.5 ft x 12 ft.
  4. Parallel parking space: 24 ft x 7 ft.
- B. Drive aisle widths for parking lots with perpendicular parking is 24' minimum, and for angled parking is 20' minimum. All dimensions not addressed here shall be as specified in BDMC Chapter 18.80 (Exhibit "E").

### **5.3.3 Location of Parking**

All required parking spaces shall be located as described in BDMC 18.80.050(C) (Exhibit "E"), including the additional restriction set forth below:

- A. For all non-residential uses, parking shall be provided within 500 feet of measured walking distance of the site upon which the use is located unless otherwise provided by the Designated Official.

### **5.3.4 Motorcycle and Bicycle Parking**

Motorcycle and bicycle parking shall meet or exceed the standards of BDMC 18.80.060 (Exhibit "E"), as follows:

- A. All Multi-Family Developments and nonresidential uses may provide one motorcycle space for every 25 required automobile parking spaces in lieu of a required automobile space.
- B. All Commercial, Light Industrial, Institutional, and Recreational Uses which require 25 or more parking spaces shall provide a designated bicycle parking area to accommodate a minimum of five (5) bicycles. Such bicycle parking areas shall provide a secure facility to which to lock bicycles and shall be located so as to be reasonably convenient to the on-site use and not interfere with pedestrian or automobile traffic. The Designated Official may require additional bicycle parking for facilities requiring more than 100 spaces with high expected bicycle traffic, such as schools.

### **5.3.5 Reduced Parking Demand Study**

Reductions in parking standards may be authorized pursuant to the process outlined in BDMC 18.80.050(E) (Exhibit “E”).

## **5.4 SIGNAGE STANDARDS**

### **5.4.1 Sign Standards Applicability**

All Implementing Projects within The Villages MPD shall be subject to the definitions, standards, requirements and processes found within BDMC Chapter 18.82 (Exhibit “E”) as well as the additional standards further detailed herein.

### **5.4.2 Sign Permits Review Process**

Sign permits shall be reviewed pursuant to BDMC Chapter 18.82 (Exhibit “E”) and Section 12 of this Agreement.

### **5.4.3 Real Estate and Construction Sign Program**

The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Villages MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 (Exhibit “E”), including the requirement to obtain a sign permit from the City and review and approval by the Design Review Committee. The Master Developer or Homeowners’ Association (HOA) shall provide enforcement for signage on private property. The City shall enforce the standards within public right-of-way and may enforce the standards on private property.

### **5.4.4 Design Review Committee Review**

The Master Developer and/or Design Review Committee may require stricter sign standards and limits than those contained in BDMC Chapter 18.82 (Exhibit “E”).

### **5.4.5 Retail Area Identification Sign(s)**

#### **A. Allowed Sign Area**

Tenants within a retail area consisting of eight or more tenants may consolidate the total allowed area of ground signs for all tenants within the retail area into one or more retail area

identification signs. The allowed sign area per tenant for a ground sign is 50 sq. feet one side, 100 sq. feet both sides. Individual tenants within a retail area for which there is a retail area identification sign shall not be allowed individual ground signs. Regardless of the number of tenants, the maximum sign area for each retail area identification sign shall be 200 sq. feet, 100 sq. feet per side. A retail area identification sign may contain only the name of the retail area, the names of tenants and directional text or arrows.

**B. Number of Retail Area Identification Signs Allowed**

Two retail area identification signs are allowed adjacent to each major roadway that the retail area has frontage on provided the allowed sign area is not exceeded.

**C. Design Standards**

- i. Retail area identification signs shall be designed with similar materials and architectural character as the buildings within the retail area so as to provide a cohesive appearance.
- ii. Water features, masonry, and/or landscaping should be incorporated into the design to create visual interest.
- iii. Signs may be indirectly lit or have internally illuminated channel letters. Internally illuminated plastic faced box signs are not allowed.

**5.4.6 Neighborhood Identification Signs**

Neighborhood Identification Signs identifying The Villages MPD are allowed within land zoned MPD by the City pursuant to the processes and standards set forth within the City's Sign Ordinance, BDMC Chapter 18.82 (Exhibit "E").

**5.4.7 Sign Standard Variances**

The review procedures and standards for variances from sign standards are pursuant to the process and standards set forth in BDMC 18.82.040(C) (Exhibit "E").

## **5.5 LANDSCAPE STANDARDS**

### **5.5.1 Applicability**

The provisions of this Section establish the landscape standards for The Villages MPD, and shall apply to all Implementing Projects within The Villages MPD except for detached Single Family residences, Accessory Dwelling Units, attached residential dwellings in buildings up to and including four (4) Dwelling Units, home occupations, Temporary Uses, accessory uses, Minor Utilities, and clearing and grading associated with these uses. All Implementing Projects, including those excepted above, are still subject to review by the Design Review Committee (except for Utility Permits and permits for Schools as set forth in the School Agreement) and to any applicable landscape proportion and percentage requirements of BDMC 18.72.030 (Exhibit “E”).

### **5.5.2 Review Process**

- A. Pursuant to BDMC 18.72 (Exhibit “E”), a landscaping plan or alternative landscaping plan designed or approved by either a landscape architect licensed in the State of Washington or a Washington State Nurseryman shall be submitted by an applicant to the Designated Official for review and approval as a Construction Permit. Pursuant to Condition of Approval No. 124 of the MPD Permit Approval, prior to approval, the Designated Official shall review each submitted landscape plan with the City’s Director of Natural Resources and Parks for compliance with the following FEIS mitigation measure: “Mast-producing species (such as hazelnut) and such other native, preferred vegetation shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings.”
- B. The landscaping plans shall contain generally accepted industry standards and direction for planting and maintenance such as, but not limited to, tree and shrub planting, staking, irrigation as necessary, and soil preparation.

### **5.5.3 Landscape Materials**

Landscape materials shall be consistent with BDMC 18.72.020 (Exhibit “E”), with the following additional restriction: sixty-five percent (65%) of all plant materials must be drought tolerant.

#### **5.5.4 Landscape Design**

Except for landscape plans included as part of permits for schools as set forth in the School Agreement, landscaping plans shall be approved by the Design Review Committee prior to submittal to the City for review and approval.

#### **5.5.5 Right-of -Way and Associated Landscape Tracts**

- A. Consistent with BDMC 18.72.030(F) (Exhibit “E”), the Master Developer shall provide trees at a ratio of one tree for each 30 lineal feet of street frontage. In addition, trees can be staggered, and/or planted in drifts or groves so long as the total number of required trees is provided. Street trees must be a minimum caliper of 2-inches diameter at breast height (DBH).
  
- B. The Master Developer shall plant medians and planter strips with landscape materials per Subsection 5.5.3 of this Agreement. Trees, shrubs and groundcovers may be planted in drifts or other arrangements to allow for stormwater quality/Low Impact Development.
  
- C. Landscaping within planter strips adjacent to parking spaces must include a low growing plant palette with a variety of textures, such as, but not limited to, low grasses, groundcovers and perennials.

#### **5.5.6 Parking Lots**

Consistent with BDMC 18.72.030(F) (Exhibit “E”), and with the further restrictions provided herein, the purpose of Parking Lot landscaping is to soften the visual appearance, soften off-site views of Parking Lots, add shade and reinforce safe pedestrian access routes to buildings and connecting sidewalks. The Master Developer shall ensure that all Parking Lots with 12 or more stalls comply with the following:

- A. Provide trees at a ratio of one tree to six stalls. Such trees may be located in planter islands or in landscape beds that intrude into the parking lot from the perimeter; and

- B. The total of all interior landscaped areas shall be at least 10 percent of the total parking area (including parking, maneuvering and loading areas); and
- C. All landscape areas must be planted with landscape materials per Subsection 5.4.3, except where pedestrian access is provided. Landscaping adjacent to parking spaces must include a low growing plant palette with a variety of textures, such as, but not limited to, low grasses, groundcovers and perennials; and
- D. A landscape area shall be provided at the end of parking aisles; and
- E. The minimum width of all landscape areas is four (4) feet. To accommodate the limited circumstance of tapers and unusual geometry, the Designated Official may approve a minimum width of two (2) feet for interior landscape areas (not adjacent to right-of-way), provided the total required area specified in Section 5.5.6.B above is provided; and
- F. A minimum six-foot wide perimeter landscaping area is required adjacent to right-of-ways, except where vehicular ingress and egress is proposed. The perimeter landscaping may also include decorative walls, solid fences or vegetation to obscure views of parking areas. Reductions in the minimum width may be allowed by the Designated Official when the intent of the perimeter landscaping can be accommodated using alternative methods (for example a dense formal hedge or trellis structure).

**5.5.7 Maintenance**

- A. Consistent with BDMC 18.72.040 (Exhibit “E”), to the extent necessary to remain healthy and attractive, the Master Developer shall ensure that all non-native landscaping shall be watered, weeded, pruned, freed of pests, and replaced as necessary. Shrubs near parking lots or driving lanes shall be pruned to prevent blockage of vision necessary for safe driving. Shrubs shall not be allowed to grow so as to reduce the width of public sidewalks or required pedestrian walkways.
- B. In addition to BDMC 18.72.040 (Exhibit “E”), the Master Developer shall maintain (and bond), for a period of three years from the date of installation, all public and private

landscape improvements, as approved from time to time by the City and/or DRC in accordance with plans and specifications accompanying each Implementing Approval. The maintenance bond requirement provided herein shall be limited to three (3) years. The Master Developer shall maintain all public and private landscape improvements beyond the initial three year obligation, unless the Master Developer determines, in its sole discretion, to transfer the maintenance obligation to a Homeowners' Association or, for private landscaping, to a subsequent owner. A Homeowners' Association shall bear the cost of landscape maintenance for any stormwater facilities associated with Low Impact Development techniques as well as public landscaping along streets or associated with stormwater facilities, unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association). The parties may elect to modify the landscape maintenance obligations for public property pursuant to a Minor Modification to the Development Agreement. The Master Developer's landscape maintenance obligation shall be limited to the following: mowing, watering, weeding, replacing dead plants, trimming, pruning, maintaining irrigation systems, mulch and other reasonably related landscape maintenance activities.

- C. The Master Developer's failure to adequately maintain the landscape improvements in accordance with this Development Agreement may result in written notice from the City to the Master Developer requiring compliance. If the landscaping is not maintained in accordance with the standards set forth herein, in the reasonable determination of the Designated Official, after giving the Master Developer ten days (10) written notice, the City may perform maintenance at the Master Developer's expense.
  
- D. Street Side Landscaping Specific Maintenance Requirements. Pursuant to Condition of Approval No. 23 of the MPD Permit Approval, the Master Developer or applicable Homeowners' Association shall maintain all street side landscaping, unless otherwise agreed upon by the City and the Master Developer or applicable Homeowners' Association. In the event the Master Developer or applicable Homeowners' Association fails to maintain such street-side landscaping, the City may enter into the property, repair or maintain the landscaping as the City determines in its reasonable discretion is necessary, and the costs of such maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing

by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the street-side landscaping is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – .280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

*In the event that the Owners' Association / Homeowners' Association fails to perform any maintenance of private alley, auto court or public street-side landscaping feature as required by Section 5.5.7 of this Agreement and, as a result, the City of Black Diamond performs said maintenance, the lot owners of the [plat/binding site plan] acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required landscaping maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement recorded under recording No. \_\_\_\_\_ shall be a lien against all property, including individual lots, within the [plat/binding site plan], and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – .280, as amended.*

**5.5.8 Timing of Landscape Improvements**

- A. The required parking lot landscaping must be in place prior to issuance of a certificate of occupancy of the building or use for which the parking lot is required. Alternatively, a performance bond guaranteeing landscape installation within six (6) months of date of issuance of a certificate of occupancy may be provided by the Master Developer.
  
- B. Landscaping within right-of-ways or associated landscape tracts must be bonded for or in place prior to City acceptance of the right-of-way.

**5.5.9 Landscape Plan Modifications**

Consistent with BDMC 18.72.050 (Exhibit “E”), an approved landscape plan may be modified through the procedures set forth in BDMC Chapters 18.08 and 18.16 (Exhibit “E”).

## **6.0 INTERNAL STREET STANDARDS WITHIN THE VILLAGES MPD**

### **6.1 PURPOSE**

Consistent with the transportation-related conditions of approval set forth in the MPD and, more specifically, Condition of Approval No. 148, this Section establishes standards for the design, configuration, maintenance and performance of all public and private streets within The Villages MPD. Pursuant to Condition of Approval No. 21 of the MPD Permit Approval, these internal street standards are designed to foster the development of a street grid system throughout the Project Site.

### **6.2 APPLICABILITY**

This Section is applicable to all streets, alleys, private drives and other vehicular accessways proposed within the MPD. This section is not applicable to intersections of MPD streets with other City of Black Diamond streets, which are governed by the City's Street Standards (Exhibit "E"). Specific land uses, site conditions, visibility limitations and sensitive areas may result in variations to the minimum street sections described in Subsection 6.3 of this Agreement and authorized by the Black Diamond Engineering Design and Construction Standards (Exhibit "E"). Such variations shall be reviewed and approved pursuant to the standards and processes set forth in Black Diamond Engineering Design and Construction Standards (Exhibit "E"). Standards not defined in this Section shall be governed by the City's Street Standards attached hereto and incorporated herein as Exhibit "E".

Adequate roadway capacity shall be provided by the Master Developer within the Project Site to provide reasonable access to all Development Parcels while also minimizing impervious surfaces and roadway impacts. Roadway capacity shall be determined as follows: Each travel lane is assumed to provide capacity for 600 vehicle trips in the am and pm peak hour. Each land use category is assumed to produce the following pm peak hour trips:

- Single Family residential: 1.01 trips/per Dwelling Unit (Single Family housing rate)
- Multi-Family residential: 0.57 trips/per Dwelling Unit (average between apartment and condominium rates)
- Commercial (general): 1.49 trips/1,000 sq. ft. Floor Area (general office rate)
- Commercial (campus): 1.48 trips/1,000 sq. ft. Floor Area (office park rate)

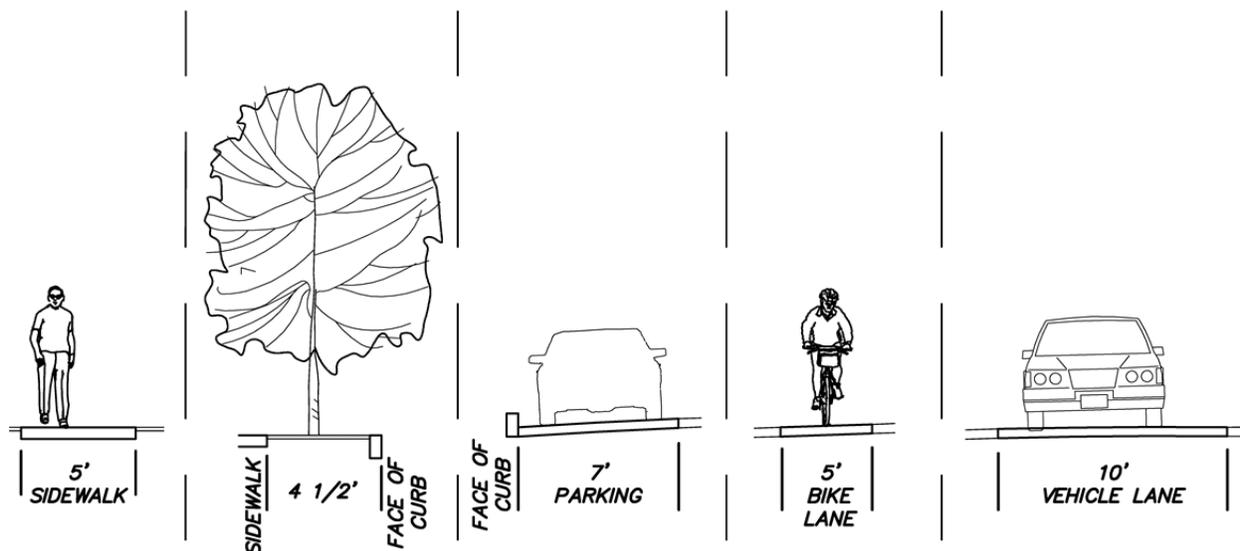
- Retail: 3.73 trips/1,000 sq.ft. Floor Area (shopping center rate)

Unless an alternative, which is supported by a traffic impact analysis report, is proposed by the Master Developer, the number of trips shall be multiplied by the appropriate number of units to determine the number of lanes that must be provided to serve each area of the Project Site. For example, 2,400 single family units could be served by one four-lane road (two lanes in each direction) or two, two-lane roads (each with one lane in each direction). (Note, additional roads might be required for emergency services purposes). Categories not listed above shall be based on the appropriate and applicable ITE trip generation rates as approved by the Designated Official in his reasonable discretion. The Designated Official may, in his reasonable discretion, require the use of a traffic model as part of review of any Implementing Project to evaluate the performance of intersections and roadways within The Villages MPD. Parameters for the use of a traffic model to evaluate impacts outside the Project Site are set forth elsewhere in this Agreement.

### **6.3 STREET DESIGN**

As authorized by Condition of Approval No. 128 of the MPD Permit Approval, street alignment for The Villages MPD shall be as shown on the MPD Site Plan in Exhibit A hereto; provided, however, that the Designated Official may approve road alignment(s) that differ from that shown on Figure 3.1 where necessary to meet the Black Diamond Engineering Design and Construction Standards (Exhibit "E").

As authorized by Condition of Approval No. 148 of the MPD Permit Approval, street sections for all street types within The Villages MPD are set by this Agreement. The various elements that may be found in public streets within The Villages MPD are shown below:



The Master Developer will provide each required element on all streets. Bike lanes are only required on those roadways designated as a bicycle route on Figure 6-3 (or as modified in individual Implementing Approvals) set forth herein. A roadway carrying traffic in excess of 600 (AM or PM) peak hour trips may require an additional vehicle lane to provide the necessary capacity.

The Designated Official may approve alternate road sections as part of an Implementing Project, to respond to specific site characteristics and design constraints. Examples of variations that may be considered by the Designated Official include but are not limited to:

- Design speeds
- Road grades and slopes
- Curb return radius
- Lane geometry (cross-slope, crowns, inverted crowns, etc.)
- Curb types and locations
- Materials and surfacing requirements
- Road section standards
- Provisions for alternate access via private streets when minimum fire access is provided
- Traffic calming measures

- Removal of parking (On-street parking is required within an Implementing Approval to the extent necessary to provide guest parking for the Implementing Approval. This means that some streets within an Implementing Approval may have street parking and some may not.)
- Removal of sidewalks – A sidewalk is required on both sides of all roadways. However, the Designated Official may consider the elimination of a sidewalk in the following circumstances:
  - Where roadways pass through Open Space, the sidewalk may be eliminated on one side, with the provision that pedestrian crossings are provided at the terminus of each dropped sidewalk section;
  - On roads where a paved or hard surface multi-purpose trail is provided parallel to and within sight of the roadway and connections are periodically provided between the roadway and the trail; or
  - A sidewalk on one or both sides may be eliminated in cul-de-sac or hammerhead type of street ends where fewer than five residences on each side are proposed.
- Removal of planter strips – Planter strips may be reduced or eliminated within or adjacent to a critical area or buffer; along the side of a street that is adjacent to a Park or Open Space area; in Commercial/Office and Mixed-Use areas; or where the planter strip would in the determination of the Designated Official create a threat to public safety (for example, sight distance or pedestrian visibility). In Commercial/Office and Mixed-Use areas, tree wells may be provided instead if approved by the Designated Official pursuant to BDMC 18.72.020(G) (Exhibit “E”).
- Avoidance of sensitive area impacts
- Bicycle lanes – Bicycle lanes are only required to be included on street sections that are shown as Bike Routes on Figure 6.3. Bicycle lanes as shown on Figure 6.3 may be eliminated if an adequate off-street trail facility is provided as a replacement, in the reasonable discretion of the Designated Official.

Private streets shall provide at least the minimum fire access required by the then applicable City building code. Private street geometry and design specifics will be reviewed and approved by the Designated Official with each Implementing Project.

## **6.4 STREET CONNECTIVITY**

### **6.4.1 On-Site Connections**

- A. The street layout for a proposed Implementing Project shall include connections to all street stub-outs provided by abutting Development as shown on Figure 6.3 within The Villages MPD. Connections to existing road stubs within King County are not required, unless they are necessary to provide fire access. As required by Condition of Approval No. 28 of the MPD Permit Approval, no Implementing Projects located east of MPD Site Plan Development Parcel V48 shall be approved prior to completion of the South Connector roadway to its intersection with SR-169 provided single point of access standards are met or alternative secondary access is provided. (Note: No connection to Green Valley Road is proposed.)

### **6.4.2 Off-Site Connections**

The Villages MPD shall stub streets to the boundaries of abutting off-site property as generally shown on the Bike Route and Future Connection Plan (Figure 6.3). The connection points on the Bike Route and Future Connection Plan are approximate. The actual design and location of connection points will be determined at the preliminary implementing plat or final engineering stage of Implementing Projects by the Master Developer and Designated Official using a collaborative process.

### **6.4.3 Pipeline Road**

The design of Pipeline Road is to extend from Parcel C at the intersection of the Community Connector and Lake Sawyer Rd SE, easterly towards SR-169, intersecting SR-169 in the vicinity of Black Diamond-Ravensdale Rd, or where the future improved intersection of SR-169 and Black Diamond-Ravensdale Road lies, as determined by the City. Pursuant to Condition of Approval No. 31 of the MPD Permit Approval, the preliminary design and alignment of the Pipeline Road shall be completed by the Master Developer and the right of way dedicated to the City prior to the City's approval of a building permit for the 1200<sup>th</sup> Dwelling Unit of The Villages MPD. The Pipeline Road shall be constructed by the Master Developer and open for

traffic prior to the City's approval of a building permit for the 1746<sup>th</sup> Dwelling Unit of The Villages MPD.

## **6.5 OWNERSHIP AND MAINTENANCE**

### **A. Ownership and Maintenance.**

Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, all street right-of-way will be dedicated to, owned and maintained by the City except for private streets which include, alleys, autocourts serving less than 20 Dwelling Units and Main Street. Maintenance of landscape tracts and planting strips associated with streets within the MPD will be provided by the Homeowners' Association or subset thereof pursuant to the provisions of Subsection 5.5.7 of this Agreement. Provided, however, requirements of this Subsection may be superseded by Subsection 13.6 of this Agreement.

### **B. Maintenance of Private Street(s).**

Master Developer agrees to maintain all private streets, alleys and autocourts serving 20 units or less as constructed in accordance with each approved Implementing Project, for a period of three years from final plat recording or other Implementing Approval. Unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association), the Master Developer's street maintenance obligation, as set forth herein, shall automatically renew for an additional two year period, and continue every two years thereafter. The Master Developer, in its sole discretion, may elect to transfer the private street maintenance obligation to a Homeowners' Association or other acceptable entity following its initial three year obligation. The Master Developer's failure to adequately maintain private streets in accordance with this Agreement will result in written notice from the City to the Master Developer requiring compliance. If a private street is not maintained in a manner adequate to maintain safe passage, in the reasonable determination of the Designated Official within ten (10) days of delivery of the written notice the City may perform the required maintenance with the reasonable costs associated therewith charged to the Master Developer. In the event of an emergency, the applicable notice period shall be reduced to twenty-four (24) hours and the City may provide notice via a phone call to the Master Developer's designated representative. Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City's total costs arising from its performance of the maintenance

**The Villages Master Planned Development  
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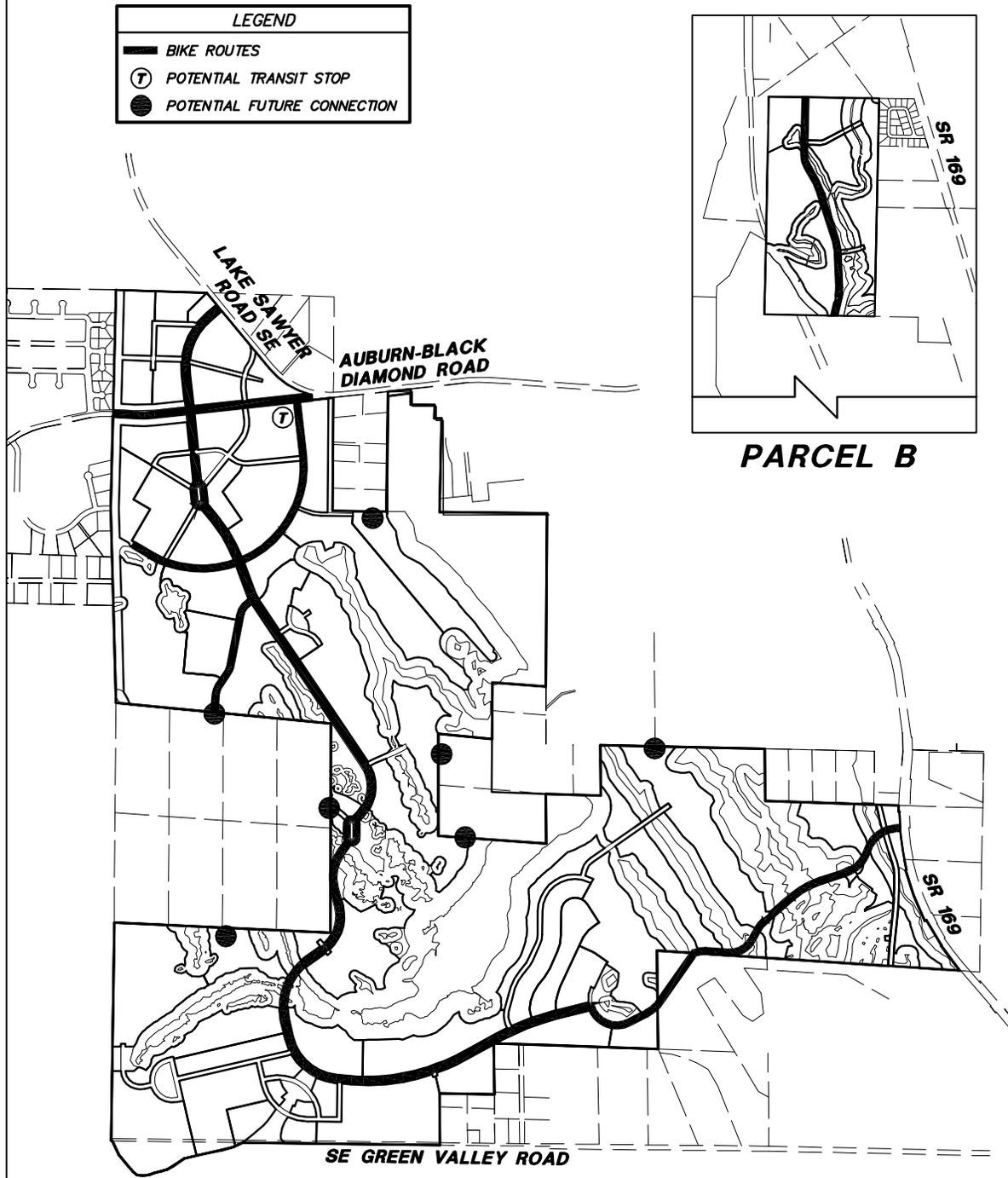
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shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

*In the event that the Owners' Association / Homeowners' Association fails to perform any maintenance of private street, alley, or auto court as required by Section 6.5 of The Villages MPD Development Agreement recorded under recording No. \_\_\_\_\_ and, as a result, the City of Black Diamond performs said required maintenance, the lot owners of the [plat/binding site plan] acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required private street maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement shall be a lien against all property, including individual lots, within this [plat/binding site plan], and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended.*

**The Villages  
Development Agreement**

**FIGURE 6.3:  
BIKE ROUTE AND FUTURE CONNECTION PLAN**



## **7.0 WATER, SEWER AND STORMWATER UTILITY STANDARDS**

### **7.1 GENERAL REQUIREMENTS**

#### **7.1.1 Regional Facilities**

Regional Facilities are necessary for Development to occur on the Project Site. The Master Developer shall design and construct the Regional Facilities that are necessary to serve the Implementing Projects, consistent with the City's adopted level of service, or as otherwise specified by Prior Agreements.

#### **7.1.2 Project-Level Facilities**

Project-Level Facilities are items such as on-site water mains, sewer and stormwater facilities. Project-Level Facilities will be Constructed by the Master Developer as Development progresses across the Project Site consistent with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") as further detailed in this Section.

#### **7.1.3 Location and Type of Facilities Approximate**

The location and type of Regional Facilities shown on the Conceptual Water, Sewer, Stormwater and Phasing Plans (attached hereto as Exhibit "K") are approximate and may change during the design phase provided that the intent of the plans is met as reasonably determined by the Designated Official. Alternate means of achieving utility service to and within the Project Site on a temporary or permanent basis will be considered by the Designated Official through a Utility Permit application.

#### **7.1.4 Bonding for Improvements**

The Master Developer may defer improvements so long as the completion of the work is guaranteed by a performance/payment bond or other financial guarantee and is not required by permit conditions or necessary for utility service or safety conditions of the public. Consistent with the Black Diamond Engineering Design and Construction Standards (Exhibit "E"), Section 1.5, the bond, or other financial guarantee, must be in a form acceptable to the City in an amount equal to one hundred fifty percent (150%) of the expected construction cost of all of the uncompleted work. The City Engineer shall review Master Developer's estimate of the cost of the improvements, identified in an approved set of civil construction drawings, guaranteeing the actual construction and installation of such improvements and payment for

such improvements within a time frame to be set by the City Engineer consistent with this Section. The construction estimate (for bond calculation purposes) shall include 15% for soft costs and 10% for administrative costs.

**7.1.5 Inspection and Acceptance of Improvements**

The City shall make a reasonable effort to inspect improvements within one (1) business day of the inspection request, as long as the improvements are complete. The inspector shall determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within 7 Days of the date of the inspection. The City shall make reasonable effort to provide one comprehensive written list upon which all subsequent inspections shall be based. The improvements shall be accepted by the City Council.

**7.1.6 Release of Bond or Financial Guarantee**

The City shall make a reasonable effort to fully release original bond or financial guarantee amounts within fourteen (14) Days of City Council acceptance of the improvements according to the Black Diamond Engineering Design and Construction Standards (Exhibit “E”).

Original bond or financial guarantee amounts may be reduced at the reasonable discretion of the Designated Official. Financial guarantees will be fully released only after final acceptance of the subject improvements by the City Council.

**7.1.7 Ownership**

All water, sewer and stormwater facilities within public right-of-way or public easement will become part of the City’s system upon acceptance by the City Council pursuant to the Black Diamond Engineering Design and Construction Standards (Exhibit “E”). Some facilities within the right-of-way may be privately owned and operated as long as the entity that owns and operates the facilities has a valid franchise agreement with the City.

**7.1.8 Deviation Review Criteria**

Deviations from standards are allowed consistent with the process and standards for Deviations found in the Black Diamond Engineering Design and Construction Standards (Exhibit “E”).

### **7.1.9 Capital Facilities Charges**

Pursuant to BDMC 13.04 and 13.20 (Exhibit “E”), the purpose of the City’s water capital facilities charge and sewer connection and reserve capacity capital charges (the “Capital Facilities Charges”) is to collect funds to assure new users pay an equitable share of the City’s water and sewer facilities. The Master Developer, however, will not be using the City’s existing system to serve the MPD’s Implementing Projects, other than on a limited basis and will instead be constructing the water and sewer infrastructure necessary to serve the Project Site. Further, if the City were to assess Capital Facilities Charges against the Implementing Projects and then, as required by state law, provide a credit to the Master Developer for the cost of its facility infrastructure construction, the total amount of the credit due would exceed the total Capital Facilities Charges to be collected. Therefore, in consideration for the Master Developer’s construction of the water and sewer infrastructure necessary to serve the Project Site, the City shall not collect Capital Facilities Charges for Implementing Project approvals sought for the Villages MPD provided the City Council adopts a resolution exempting Implementing Projects from the City’s Capital Facilities Charges. If the City Council does not adopt such a resolution, general facilities charges will be assessed against Implementing Projects of The Villages MPD and the Master Developer will receive a credit against such charges for the cost of its construction of facility infrastructure.

## **7.2 WATER SYSTEM STANDARDS**

### **7.2.1 Water Availability**

The Master Developer controls property with the rights to approximately 1,080,310 gallons of water per day (“GPD”). This is determined through the “Three Party Agreement” between Plum Creek Land Company, Black Diamond Associates, Ltd., and Palmer Coking Coal Company dated August 8, 2003.

Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement. Improvements necessary to provide water service to each Implementing Project must be provided by the Master Developer consistent with this Agreement. Connections are allowed up to the point of existing capacity as arranged for in the Water Supply and Facilities Funding Agreement dated August 11, 2003, as amended by the First Addendum dated July 22, 2004 (“WSFFA”). If there are insufficient facilities or capacity to serve some or all of a proposed Implementing Project, then the Designated Official

may require the Master Developer to obtain such additional water supply capacity and/or design and construct new water mains, upgrades to existing mains, a reservoir, pressure reducing valves or such other facilities necessary to serve the Implementing Project.

### **7.2.2 Water System Design and Construction**

- A. Except as specified in the WSFFA, all water system facilities (on and off-site) required for service to The Villages MPD shall be designed and Constructed by the Master Developer, in accordance with The Villages Conceptual Water Plan (Figure 7.2A), and the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and will become part of the City's system upon acceptance by the Designated Official.
  
- B. Fire flows, hydrant locations and distribution must comply with the then applicable City building code.
  
- C. Pursuant to Section 6.1.05.4 of the Black Diamond Engineering Design and Construction Standards (Exhibit "E"), sufficient quantity and duration of fire flows shall be available prior to the start of any combustible construction. Such requirements apply to the areas actually under construction; areas under construction but without structures are not required to have fire flows until combustible construction begins.

### **7.2.3 Water Connection Charges Not Applicable**

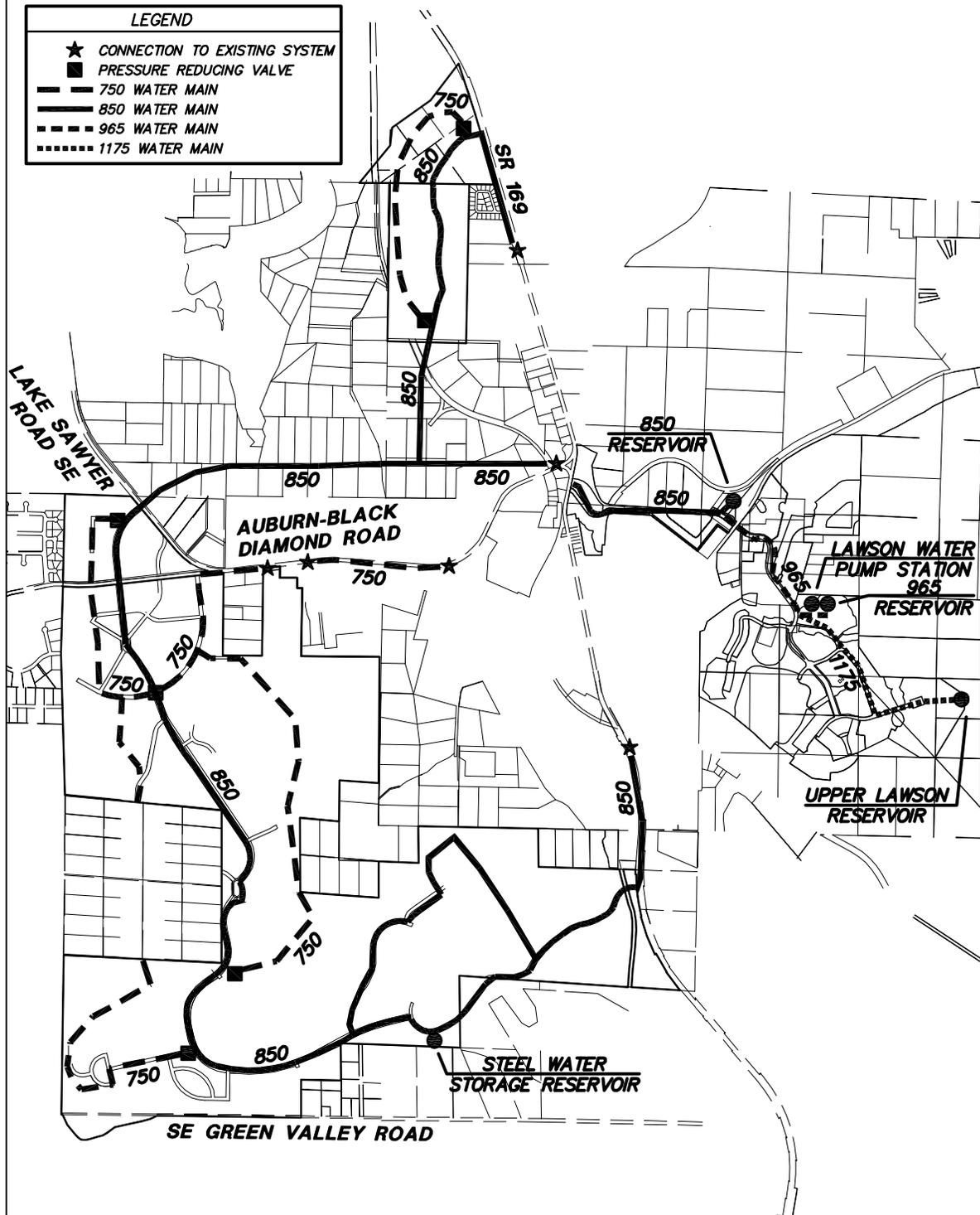
Pursuant to Section 7.1.9 above and in recognition: (i) that The Villages MPD's water system and the improvements to the City's water system necessary for Development have been or will be installed at the Master Developer's cost; and (ii) of the substantial investment in water infrastructure resulting from the WSFFA, Implementing Projects within The Villages MPD shall not be required to pay the City's general facilities charges, connection charges, or system development charges, including any amendments thereto except as provided for in Section 7.2.1.

### **7.2.4 Remaining Water Capacity**

If, after three years from the final Implementing Approval, the Master Developer has not submitted a development project within the City's water service area that will use any remaining water capacity from the 1,080,310 GPD, the City will have the first right of refusal to

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**FIGURE 7.2A:  
CONCEPTUAL WATER SYSTEM PLAN**



repurchase the water supply at the then current capital facility charge rate reduced by the conservation factor achieved within The Villages MPD.

#### **7.2.5 Water Conservation and Monitoring Plan**

The Villages MPD's Water Conservation Plan at Chapter 8 of the MPD Permit Application was approved in the MPD Permit Approval. Pursuant to Condition of Approval No. 53 of the MPD Permit Approval, this Section restates the Water Conservation Plan approved in the MPD Permit Approval Conditions for The Villages. The intent of this plan is to create a 10% reduction in water consumption compared to the current existing City use standard of 230 gallons per day (GPD). If the 10% savings target is not achieved, then resulting constraints on water supply allocated to The Villages MPD may limit ultimate build-out of the MPD.

In order to ensure the water conservation techniques proposed for The Villages MPD will in fact obtain a 10% reduction, a monitoring plan will be implemented by the Master Developer. Monitoring residential water use can only be attained through direct meter reading of individual homes. Pursuant to Condition of Approval No. 54 of the MPD Permit Approval, following occupancy of the 500<sup>th</sup> Dwelling Unit, a representative block of homes, representing 5% of the total (25 Dwelling Units), will be selected by the Designated Official from the different home types. Water use for those 25 Dwelling Units shall be tracked for a period of one year. If the Designated Official determines, in his reasonable discretion, that the water monitoring plan described above is not adequately tracking MPD water usage, the Designated Official may select a method for monitoring water use including review of City meter records. The resulting data will be compared to the baseline of 230 gallons per day to determine if the 10% reduction is being achieved. The results of the water monitoring plan shall be completed within thirty (30) days following the conclusion of meter reading and be maintained by the Designated Official.

This same monitoring method will be repeated following the completion of future Phases. If the data results show water use of any particular Phase has not been reduced by at least 23 GPD (10% below the City's current existing City use standard of 230 GPD), then an updated mitigation plan reasonably acceptable to the City will be developed by the Master Developer at that time to bring the future Development within the required standard.

The approved water conservation plan is set forth below.

The following appliances and plumbing fixtures must meet the EPA WaterSense specifications in effect at the time of building permit application. Specifications equivalent to the EPA WaterSense specifications may be used with the concurrence of the City and Master Developer. The current EPA WaterSense specifications are summarized below:

**A. Toilets**

1. Single Flush Toilets - The effective flush volume shall not exceed 1.28 gallons (4.8 liters).
2. Dual Flush Toilets - The effective flush volume shall not exceed 1.28 gallons (4.8 liters). The effective flush volume is defined as the composite, average flush volume of two reduced flushes and one full flush.

**B. Lavatory Faucets**

1. The maximum flow rate shall not exceed 1.5 gallons per minute (gpm) at a pressure of 60 pounds per square inch (psi) at the inlet, when water is flowing; and
2. The minimum flow rate shall not be less than 0.8 gpm (3.0 L/min) at a pressure of 20 psi at the inlet, when water is flowing. A lavatory faucet is also considered to meet this flow rate requirement if equipped with a lavatory faucet accessory that meets this requirement.

**C. Kitchen Faucet**

Maximum flow rate of 2.2 gpm at 60 psi.

**D. Showerheads**

Maximum flow rate of 2.5 gpm at 80 psi.

**E. Appliances**

Dishwashers must be ENERGY STAR qualified or equivalent.

Clothes washers must be ENERGY STAR qualified with a water factor of less than or equal to 6.0 gallons of water per cycle per cubic foot of capacity.

### **7.2.6 Regional Water Facilities**

The Villages MPD Conceptual Water Plan (Figure 7.2A) provides one alternative for the general location of on and off-site water mains, pressure reducing valves and reservoirs to be Constructed by the Master Developer. The Villages MPD Main Property is located primarily within the 750 pressure zone. Water from existing City facilities will be delivered to the Project Site using pressure reducing valves to reduce the water to the appropriate pressure zone.

The Master Developer may seek alternate means of achieving water service to and within The Villages MPD through the Utility Permit application and approval process set forth in the BDMC (Exhibit "E") and Black Diamond Engineering Design and Construction Standards (Exhibit "E").

## **7.3 SANITARY SEWER DESIGN STANDARDS**

### **7.3.1 Sewer Availability**

This Agreement provides sewer availability to service 4,800 Dwelling Units on The Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement. Any Implementing Project application process that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement.

### **7.3.2 Sewer Design and Construction Standards**

All sewer system facilities (on and off-site, except those existing or proposed facilities owned or maintained by King County) required to provide service to The Villages MPD shall be designed and Constructed by the Master Developer in accordance with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and will become part of the City's system upon acceptance by the City.

### **7.3.3 Connection to City Sewer**

Pursuant to Section 7.1.9 above, Implementing Projects within The Villages MPD shall not be required to pay the City's general facilities charge or other connection fees provided: (i) all supporting sewer infrastructure necessary to serve The Villages MPD is provided for by the

Master Developer and Implementing Project developers; and (ii) the mitigation projects listed in Tables 11-3-1 through 11-3-4 and 11.4.1 in Section 11 are Constructed by the Master Developer prior to the end of the Build-Out Period. The Master Developer shall deliver the sewage from The Villages MPD to the City sewer system or direct to a King County facility as directed by the City.

#### **7.3.4 Regional Sewer Facilities**

The Villages MPD Conceptual Sewer Plan (Figure 7.3) shows the general location of the proposed sewer collection system, force mains and up to four (4) new pump stations that will pump wastewater to a City designated discharge location. Approximate facility locations are shown on attached Figure 7.3, final locations are subject to City review and approval.

### **7.4 STORMWATER MANAGEMENT STANDARDS**

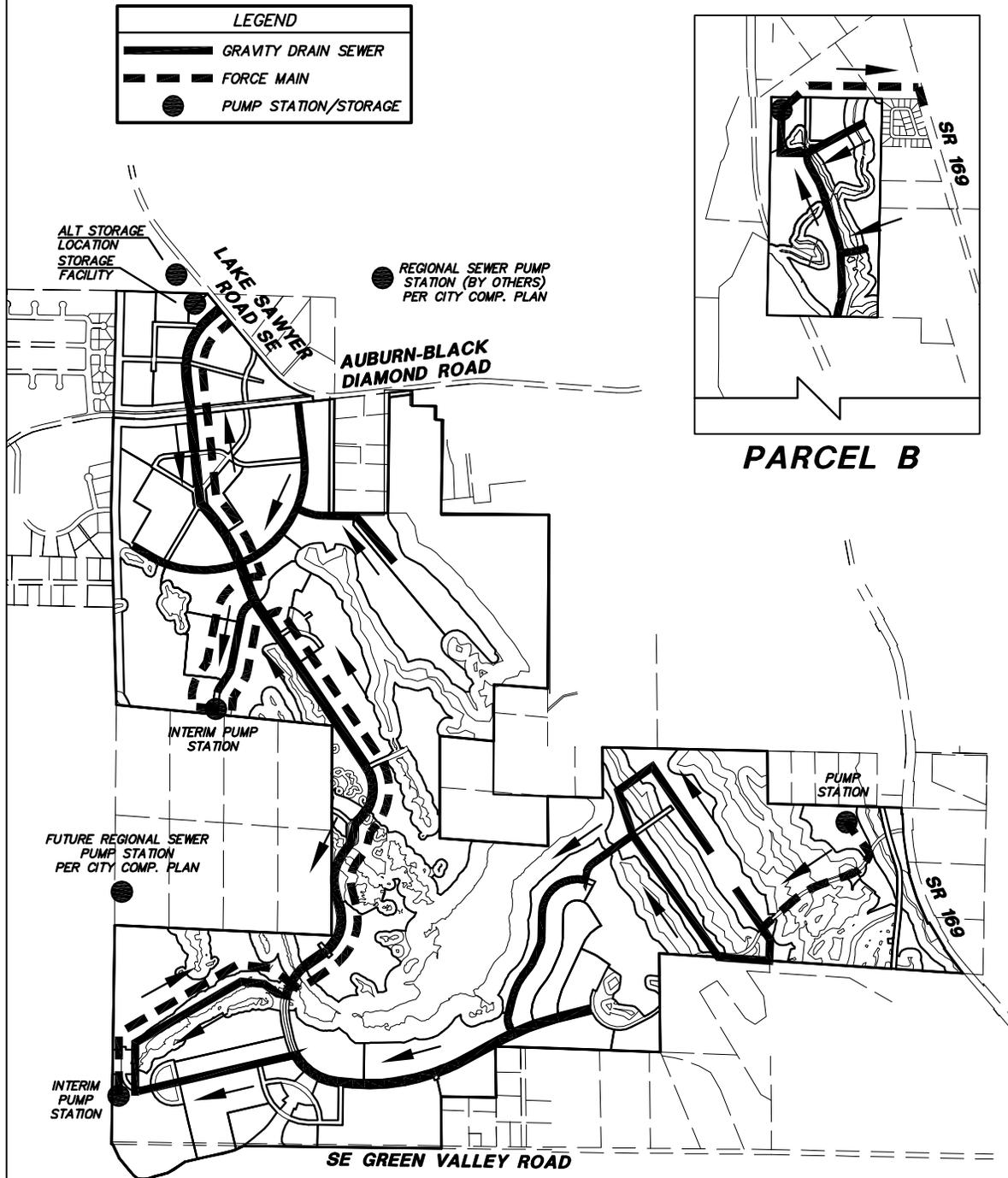
#### **7.4.1 Stormwater Facilities Availability**

Stormwater facilities must be provided consistent with the standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and further detailed in Section 7.4. When constructing an Implementing Project, the Master Developer (and successors-in-interest) must comply with both the stormwater standards applicable to all zones for all Phases (see Section 7.4.4.A), as well as the specific stormwater standards applicable to the stormwater zone in which the Implementing Project is located. For each proposed Implementing Project, a storm drainage report providing for preliminary sizing of facilities must be provided that evaluates the proposal and specifies the facilities necessary to meet the standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and this Agreement. Construction of temporary or permanent water quality and/or detention ponds, infiltration facilities, storm drains, water quality facilities, wetland recharge or other stormwater facilities may be required by the Designated Official to ensure that the facilities necessary to serve an Implementing Project are in place or will be provided.

Prior to submitting applications for Implementing Projects for Phase 3 of The Villages MPD, the Master Developer shall demonstrate that King County has permitted Project III-13. Alternatively, the Master Developer and the City shall agree on an alternative method of stormwater treatment within the City limits.

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**FIGURE 7.3:  
CONCEPTUAL SEWER PLAN**



### **7.4.2 Regional Stormwater Facilities**

The components of the stormwater management plan for the Project Site include infiltration of stormwater into the shallow aquifer (Qvr) through Low Impact Development facilities; infiltration into the deep aquifer (Qpog) through infiltration facilities; conventional ponds; wetland recharge; water quality treatment facilities and regional stormwater management facilities.

Facilities to serve the entire Villages MPD have been planned and approximate locations determined (see attached Conceptual Stormwater Plan, Figure 7.4). There will be two stormwater facilities which will infiltrate into the deeper aquifer (Qpog). One of the stormwater facilities will be used to treat the excess stormwater created by the need for water balance to Horseshoe Lake. The second will be an off-site Regional Facility to treat and infiltrate the excess stormwater created by the need for water balance to the shallow aquifer, Black Diamond Lake, and the wetlands on the southern portion of the Project Site. The Master Developer shall be required to obtain all necessary permits from King County for construction, including any necessary approval or agreement authorizing the City to perform maintenance of the large regional storm pond proposed west of the Project Site. The Master Developer shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.

Pursuant to Condition of Approval No. 77 of the MPD Permit Approval, alternate means of achieving stormwater service within the MPD may be authorized through a Utility Permit, including deviations from stormwater facilities listed in the EIS, when justified by a technical analysis, risk assessment.

### **7.4.3 Stormwater Management Goals**

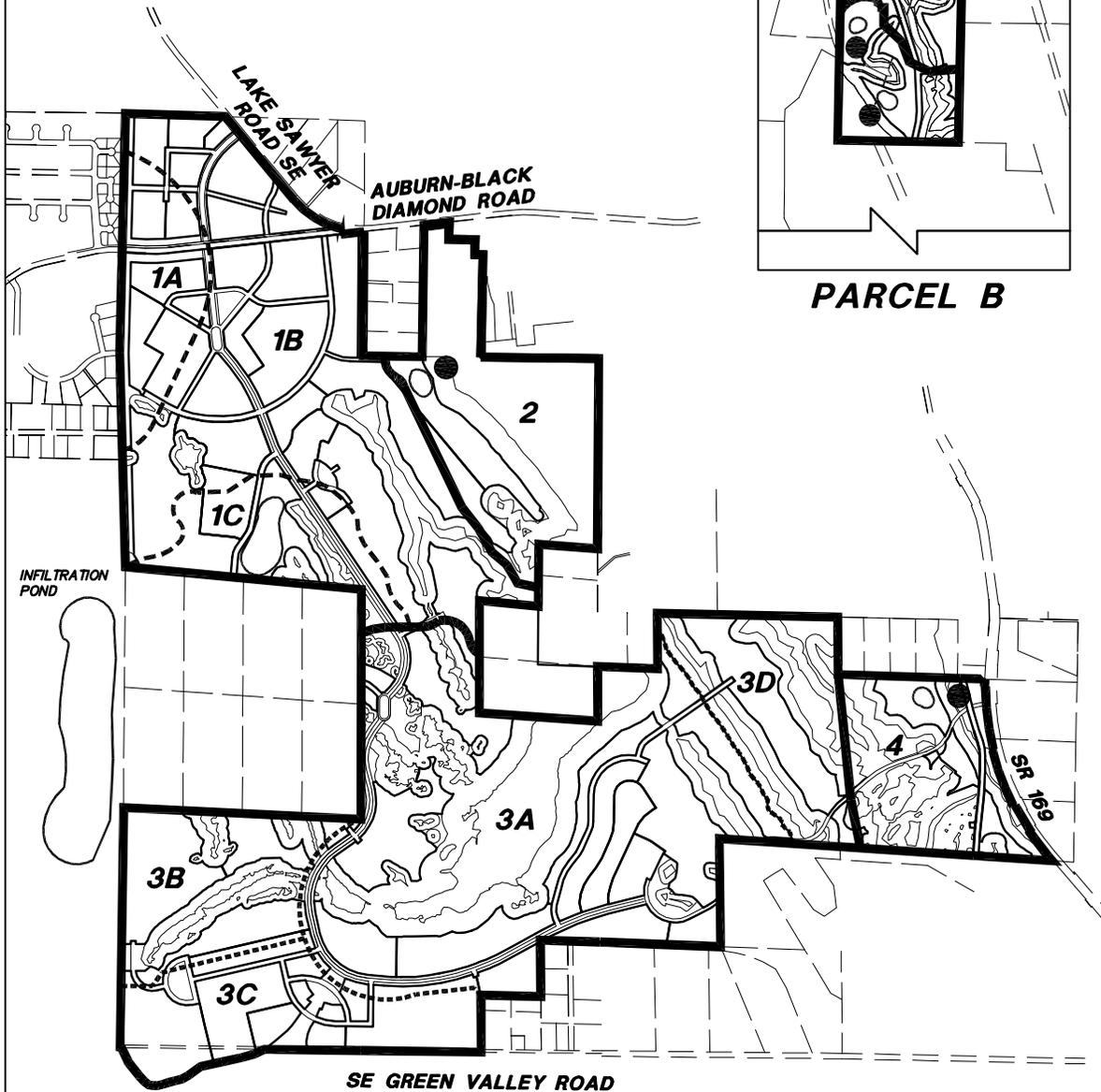
The Master Developer shall comply with the stormwater management goals provided below. In the event of a conflict between these goals and the Stormwater Management Design Standards set forth in Section 7.4.4 of this Agreement, the Stormwater Management Design Standards shall prevail.

- A. Minimize impacts to water quality in Lake Sawyer by assuring no net increase in phosphorus to Lake Sawyer occurs associated with MPD development within basins that

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**FIGURE 7.4:  
CONCEPTUAL STORMWATER PLAN**

| LEGEND  |  |
|---|--|
|  | STORMWATER MANAGEMENT ZONE                               |
|  | SUB-ZONE LINES   |
|  | SUB-ZONE LINES<br>(DEPENDANT ON FINAL<br>LAND COVERAGES) |
|  | PROPOSED POND  |
|  | DISCHARGE POINT  |



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- drain to Lake Sawyer. No net increase can be accomplished by on-site or off-site source or mechanical controls, control of phosphorus from off-site compensating projects, or other methods approved by the Designated Official.
- B. Pursuant to BDMC 14.04.020 (Exhibit "E"), maintain surface water and groundwater quality and quantities consistent with the requirements of the Department of Ecology's 2005 Stormwater Manual ("2005 DOE Manual") for Western Washington.
  - C. Recharge groundwater with stormwater infiltrated using Low Impact Development techniques and infiltration facilities.
  - D. Utilize clean roof run-off to recharge wetlands, streams and groundwater to the greatest extent feasible.
  - E. Provide a menu of stormwater treatment options ranging from ponds to rain gardens.
  - F. Minimize impacts to Horseshoe Lake water levels by ensuring that the volume of stormwater infiltrated into the shallow outwash upgradient of Horseshoe Lake is approximately the same as that which infiltrates under predeveloped conditions.
  - G. Maintain hydrology for Black Diamond Lake and wetlands on the site by recharging them with approximately the same volume of stormwater as would occur under predeveloped conditions.
  - H. Maintain pH levels and water quality in Black Diamond Lake.
  - I. Avoid impacts to steep slopes by routing excess stormwater away from slopes to a stormwater management facility.
  - J. Pursuant to Condition of Approval No. 71 of the MPD Permit Approval, provide a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction Phase.

- K. Construct a stormwater system that does not burden the City with excessive maintenance costs.
- L. Pursuant to Condition of Approval No. 74 of the MPD Permit Approval, maintain a stormwater system that allows for adaptive management of detention and discharge rates and allows for redirection of stormwater overflows when environmental advantages become apparent.

#### **7.4.4 Stormwater Management Design Standards**

The Villages MPD has been divided into stormwater management zones shown on the Conceptual Stormwater Plan (Figure 7.4). Each stormwater management zone has a unique set of specific stormwater requirements. Developable area, areas of impervious and pervious surface, area of rooftops, the amount of stormwater that can be infiltrated into the shallow outwash (Q<sub>vr</sub>) and the amount of recharge required for wetlands and Black Diamond Lake must be determined for ultimate stormwater balance calculations. Water balance calculations will need to be performed based on actual developed conditions to ensure water balance goals are met. Alternative Stormwater Management Design Standards may be approved by the Designated Official through the deviation process set forth in the Black Diamond Engineering Design and Construction Standards (Exhibit “E”).

Individual Implementing Projects shall meet the overall requirements set forth in Subsection 7.4.4(A), as well as the stormwater requirements unique to the stormwater zone in which each is located. Each Implementing Project shall provide calculations of the amount of stormwater discharged. The Master Developer shall maintain a running tally and will manage the water balance requirements for each stormwater zone to ensure that the water balance goals are met.

#### **A. Standards Applicable to All Stormwater Zones for All Phases:**

- 1. Pursuant to BDMC 14.04.020 (Exhibit “E”), stormwater facilities shall be designed to meet the requirements of the Department of Ecology, 2005 DOE Stormwater Management Manual for Western Washington (“Manual”). Pursuant to Condition of Approval No. 76 of the MPD Permit Approval, in the event that new phosphorous treatment technology is discovered

and is either certified by the Department of Ecology as authorized for use in meeting requirements of the Manual, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as “All known, available, and reasonable methods of prevention, control, and treatment (“AKART”) as defined in WAC 173-201A-020, then the Master Developer shall incorporate that new phosphorous treatment technology in all new ponds and facilities applied for as part of an Implementing Project. Pursuant to BDMC 18.98.195 (Exhibit “E”), in the event that new stormwater standards are adopted by the City prior to the beginning of a new Phase, Implementing Projects within the new Phase shall comply with the new standards; provided, however, that the Master Developer shall not be required to resize storm ponds already constructed except as required by the City’s Department of Ecology discharge permit and state law.

2. Pursuant to Condition of Approval No. 70 of the MPD Permit Approval, all Implementing Projects in a given Phase shall comply with the conditions of the then current NPDES permits (issued to the City by the Washington State Department of Ecology) in effect at the time of submittal of the first Implementing Project application in that Phase.

3. Pursuant to Condition of Approval No. 68 of the MPD Permit Approval, galvanized and copper and similar roof and gutter materials, as well as roof treatments such as chemical moss killers are prohibited for any rooftop draining directly to wetlands, streams, or their associated buffers without treatment. Stormwater from non-copper or non-galvanized rooftops do not require water quality treatment prior to infiltration or discharge unless combined with stormwater from pollution-generating surfaces.

4. Pursuant to BDMC 14.04.020 (Exhibit “E”), the Master Developer shall treat stormwater collected from pollution generating surfaces so that it complies with the water quality requirements of the 2005 DOE Manual, or any subsequent Manual adopted by the City of Black Diamond and in effect at the start of a Phase.

5. Pursuant to BDMC 14.04.020 (Exhibit “E”), all treatment options allowed under the 2005 DOE Manual or Manuals subsequently adopted by the City, such as ponds, vaults, media filter strips, bioretention and rain gardens, are allowed, except as otherwise provided in any Manual subsequently adopted by the City that may be in effect at the start of any Phase.

6. Pursuant to Condition of Approval No. 67 of the MPD Permit Approval, the following mechanisms shall be utilized where feasible in Implementing Project applications so as to integrate Low Impact Development techniques into The Villages MPD build-out:

- i. Reduced roadway widths
- ii. Infiltration wells
- iii. Rain gardens
- iv. Bioswales
- v. Media filter strips
- vi. Reduced driveway lengths
- vii. Pervious asphalt and concrete in alleys
- viii. Pervious pavers
- ix. Install pet waste stations in common areas

7. Pursuant to Condition of Approval No. 70 of the MPD Permit Approval, the Master Developer shall fund any reasonable and necessary costs for the training of City staff or a contractor so that the City may provide inspection services for City actions related to any NPDES permits granted by Ecology for The Villages MPD Development.

8. Pursuant to Condition of Approval No. 79 of the MPD Permit Approval, the Master Developer shall pay 60% of all costs from the King County Lake Stewardship Program through the duration of construction for Phase 1A of The Villages MPD. Thereafter, all costs will be covered by stormwater utility fees collected by the City.

**B. Stormwater Management Zone 1**

Stormwater Management Zone 1 consists of the north portion of the Project Site. Under existing conditions, all stormwater infiltrates in the outwash soils present within Stormwater Management Zone 1. The main constraint for Stormwater Management Zone 1 is Horseshoe Lake, which lies directly to the west of the Project Site. Horseshoe Lake has a history of flooding problems, and may be sensitive to groundwater fluctuations, but it also requires flows to maintain summer use. To address this issue, stormwater infiltration to the shallow outwash soils tributary to Horseshoe Lake is proposed to meet the predeveloped infiltration volume. By matching this volume, impacts to both the low flows and high flows are mitigated. Remaining

stormwater will be infiltrated into the deeper outwash soils which bypass Horseshoe Lake through the use of a regional water quality and infiltration facility.

Stormwater Management Zone 1 has been divided into three sections based on the stormwater management requirements. Stormwater Management Zones 1A and 1B are tributary to Horseshoe Lake, while Stormwater Zone 1C is cross gradient from Horseshoe Lake. To ensure that the predeveloped volume of water conveyed to Horseshoe Lake is matched, an accounting of the infiltrated water volume (based on pervious area, rooftop area and impervious area infiltrated) within this zone must be maintained through The Villages MPD build-out.

Stormwater conveyed to Horseshoe Lake via the shallow outwash soils will include:

1. All stormwater in Stormwater Management Zone 1A from areas underlain by outwash soils. Stormwater from rooftops that comply with Section 7.4.4.A(3) above maybe infiltrated directly, while any additional stormwater collected from non-complying rooftops or other pollution-generating surfaces shall be treated to meet the water quality requirements applicable to that Phase prior to infiltration.
2. All stormwater from Stormwater Management Zone 1B until the predeveloped average annual infiltrated volume is met. Stormwater from rooftops that comply with Section 7.4.4.A(3) above may be infiltrated directly while any additional stormwater collected from non-complying rooftops or other pollution-generating surfaces shall be treated to meet the basic water quality requirements applicable to that Phase prior to infiltration.
3. Stormwater from rooftops and pervious surfaces used to recharge wetlands.

Stormwater conveyed to the deeper outwash deposits (Qpog) will include:

4. All stormwater within Stormwater Management Zone 1 and not conveyed to Horseshoe Lake as provided in subsections 1-3 above.

The stormwater management requirements for each section of Stormwater Management Zone 1 are as follows:

1. *Stormwater Management Zone 1A Standards*

- i. All stormwater shall be infiltrated into the shallow aquifer (Qvr) unless underlying soils are till (including any till fill area), provided the average annual volume to be infiltrated has not yet been met.
- ii. Surfaces requiring basic water quality treatment per the 2005 DOE Manual may be infiltrated in Stormwater Management Zone 1A after basic water quality treatment.
- iii. Surfaces requiring enhanced water quality treatment per the 2005 DOE Manual may be infiltrated in Stormwater Management Zone 1A after enhanced water quality treatment or may be infiltrated in Stormwater Management Zone 1B after basic water quality treatment.
- iv. All stormwater that cannot be infiltrated due to the underlying soil conditions, will be routed to the regional stormwater facility located in the southern portion of Stormwater Management Zone 1C.

2. *Stormwater Management Zone 1B Standards*

- i. Stormwater from rooftops and pervious surfaces shall be used to recharge wetlands where required. All remaining stormwater shall be infiltrated to the shallow aquifer (Qvr) provided that the predeveloped average annual volume to be infiltrated has not yet been met.
- ii. Stormwater from pollution generating surfaces (roads, parking lots, driveways etc.) shall be treated for basic water quality and infiltrated, provided the predeveloped average annual volume to be infiltrated has not yet been met. Once the predeveloped average annual volume has been met, all remaining stormwater shall be conveyed to the stormwater facility located in the southern portion of Stormwater Management Zone 1C.

3. *Stormwater Management Zone 1C Standards*

- i. Stormwater from rooftops and pervious surfaces shall be used to recharge wetlands where required. All other runoff will be conveyed to the regional stormwater facility within this drainage zone (Stormwater Management 1C, see Figure 7.4) unless the runoff is needed to meet the water balance needs to Horseshoe Lake.

**C. Stormwater Management Zone 2 Standards**

Stormwater Management Zone 2 consists of the eastern portion of the Project Site, which drains directly to Rock Creek. All stormwater runoff flows to Rock Creek, which flows into Lake Sawyer. Lake Sawyer is a phosphorous sensitive lake which is located approximately three quarters of a mile north of the Project Site. In addition to basic water quality treatment requirements per the 2005 DOE Manual, phosphorous treatment is required to be provided for all basins that drain towards Lake Sawyer. A detention/water quality pond will be used to manage stormwater for this zone. A large wet pond is proposed to provide basic water quality and phosphorus treatment for this zone (Stormwater Management Zone 2).

Runoff from rooftops shall be used to recharge wetlands and maintain wetland hydrology. All other runoff will be conveyed to the regional detention/water quality pond in this drainage zone (Stormwater Management Zone 2).

**D. Stormwater Management Zone 3**

Stormwater Management Zone 3 consists of the southern portion of the Project Site. A large portion of Stormwater Management Zone 3 is tributary to Black Diamond Lake. A portion along the southwest border of Stormwater Management Zone 3 is underlain with outwash soils, where stormwater runoff infiltrates under existing conditions. The remainder of Stormwater Management Zone 3 is underlain with till soils, with stormwater runoff flowing to wetlands throughout the zone. In order to maintain hydrology and mitigate the effects of Development, only runoff from rooftops may be used to recharge Black Diamond Lake. Predeveloped stormwater volumes will be provided to Black Diamond Lake with rooftop runoff. In order to minimize potential erosion south of the Project Site, the predeveloped infiltration volume for this area will be matched. Finally, many of the wetlands within Stormwater Management Zone 3 discharge to steeply sloping areas surrounding Black Diamond Lake. To minimize erosion potential, the existing volume conveyed to each wetland will be matched to maintain wetland

hydrology. Remaining stormwater will be infiltrated into the deeper outwash soils through the use of a regional water quality and infiltration facility.

Stormwater Management Zone 3 has been divided into four sections based on the stormwater management requirements. To ensure that the predeveloped volumes of water conveyed to Black Diamond Lake, onsite wetlands, and the outwash soils are matched, the Master Developer must maintain an accounting of the water volumes conveyed to each (based on pervious area, rooftop area and impervious area) within this zone through the Build-Out Period.

Stormwater conveyed to Black Diamond Lake will include:

1. Stormwater runoff from rooftops only.

Stormwater infiltrated in the outwash soils along the south boundary will include:

2. All stormwater from Stormwater Management Zone 3C until the predeveloped average annual infiltrated volume is met. The rooftops will be infiltrated directly while the remaining stormwater will be treated for basic water quality before infiltration.

Stormwater conveyed to deeper outwash deposits (Qpog) will include:

3. All other stormwater not needed for shallow aquifer recharge, Black Diamond Lake recharge or wetland recharge.

The stormwater management requirements for each section of Stormwater Management Zone 3 are as follows:

1. *Stormwater Management Zone 3A Standards*
  - i. Stormwater from rooftops meeting the requirements of Section 7.4.4.A(3) shall be used for wetland recharge and recharge to Black Diamond Lake to match predeveloped volumes.
  - ii. Clean stormwater from backyards may also be used for wetland recharge if needed but may not be used for recharge to Black Diamond Lake.

All stormwater from pollution generating surfaces shall be conveyed to the large regional infiltration facility to the west.

- iii. Once the wetland recharge and Black Diamond Lake recharge requirements have been met, all other stormwater will be conveyed to the regional stormwater facility to the west.

2. *Stormwater Management Zone 3B Standards*

- i. Stormwater from rooftops and/or backyards will be used for wetland recharge. All other stormwater not required for wetland recharge will be conveyed to the regional stormwater facility to the west (Figure 7.4).

3. *Stormwater Management Zone 3C Standards*

- i. Stormwater from rooftops and pervious surfaces shall be infiltrated to the shallow aquifer (Qvr) provided that the predeveloped average annual volume to be infiltrated has not yet been met.
- ii. Stormwater from pollution generating surfaces (roads, parking lots, driveways etc.) shall be treated for basic water quality and infiltrated, provided the predeveloped average annual volume to be infiltrated has not yet been met. Once the predeveloped average annual volume has been met, all remaining stormwater shall be conveyed to the regional stormwater facility located to the west (Figure 7.4).

4. *Stormwater Management Zone 3D Standards*

- i. If Black Diamond Lake requires more recharge volume after the build-out of Stormwater Management Zone 3A, runoff from rooftops will be conveyed to Black Diamond Lake to provide the remainder of the volume required.
- ii. Stormwater from rooftops and backyards will be used for wetland recharge.
- iii. All remaining stormwater will be conveyed to the regional stormwater facility located to the west (Figure 7.4).

**E. Stormwater Management Zone 4 Standards**

Stormwater Management Zone 4 consists of the eastern portion of the Project Site, which drains directly to Jones Lake. All stormwater runoff flows to Jones Lake which flows into Lake Sawyer via Rock Creek. In addition to basic water quality treatment requirements, phosphorous treatment is required to be provided for all basins that drain towards Lake Sawyer. A detention/water quality pond will be used to manage stormwater. A large wet pond is proposed to provide basic water quality and phosphorus treatment.

All stormwater will be conveyed to the detention/water quality pond in this Stormwater Management Zone.

**F. Stormwater Management Zone 5A and 5B Standards**

Stormwater Management Zone 5 consists of Parcel B of The Villages MPD. The northwest corner of Stormwater Management Zone 5 is located on outwash soils with good infiltration rates. The remainder of Stormwater Management Zone 5 (approximately two-thirds of the basin) is located on till soils. Stormwater runoff from the northern portion of Stormwater Management Zone 5 drains to the north and northwest overland and through a series of wetlands and a stream to the outwash soils in the northwest corner where it infiltrates. The infiltrated stormwater flows towards Ravensdale Creek. In addition to the till portions of the Project Site, runoff from adjacent offsite parcels to the east also drains to the wetlands and stream on the till portion of the Project Site and infiltrates into the outwash soils in the northwest corner of the Project Site. The existing volume tributary to each of the wetlands will be matched in developed condition with runoff from rooftops to maintain wetland hydrology. Runoff from the remaining rooftops and other non-pollution generating surfaces are proposed to be infiltrated directly. All remaining stormwater runoff will be directed to an infiltration and water quality facility located in the outwash in the northwest corner of Stormwater Management Zone 5. Based on available soils information, the existing soils do not meet Ecology soil requirements for water quality treatment. Due to this fact, the stormwater from the northern portion of Stormwater Management Zone 5 requires treatment for phosphorous removal and enhanced water quality treatment based on the currently proposed land use.

Stormwater runoff from the southern portion of Stormwater Management Zone 5 drains to the south and southwest where it enters an existing wetland, located along the south and

southwest boundaries of the Project Site, and eventually infiltrates. There are several wetlands within this portion of the Project Site. The existing volume conveyed to each of the wetlands will be matched in developed condition with runoff from rooftops to maintain wetland hydrology. The remaining stormwater runoff will be conveyed to two stormwater facilities, which will provide detention, phosphorous treatment, and basic water quality treatment.

#### **7.4.5 Stormwater Monitoring and Phosphorus Load Calculation**

The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). A tabular list of stormwater monitoring requirements is included at Exhibit "O". The monitoring parameters include annual volumes of total phosphorus (Tp) from The Villages MPD that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring indicates that the MPD site is discharging more Tp than indicated, the Master Developer shall modify existing practices or facilities, modify the design of any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that individually or collectively provide an offsetting reduction in Tp. Pursuant to Condition of Approval No. 79 of the MPD Permit Approval, Exhibit "O" also contains a memorandum describing how the Master Developer will meet the Stormwater Management Goal set in Section 7.4.3(A).



## **8.0 SENSITIVE AREAS STANDARDS**

### **8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY**

All Development within The Villages MPD shall be subject to the standards, requirements and processes of the Sensitive Area Ordinance. The sensitive areas jurisdictional determination and sensitive area reports have been completed and verified for the Project Site. Consistent with the Sensitive Areas Ordinance, any Implementing Project that does not propose any changes or alterations to sensitive areas or their buffers as shown in the reports described in Subsection 8.2 has met the jurisdictional determination requirement of BDMC 19.10.120(C) Sensitive Area Jurisdiction Decision, such that no additional reports under BDMC 19.10.130, BDMC 19.10.337, BDMC 19.10.435, and BDMC 19.10.445 (Exhibit "E") need to be submitted with the Implementing Project application.

### **8.2 SENSITIVE AREAS DETERMINATIONS**

Consistent with the Sensitive Areas Ordinance, at the time of construction, sensitive areas and their established buffers shall be clearly identified and marked in the field.

#### **8.2.1 Wetland Determinations and Delineations Final**

The presence and absence of wetlands, wetland typing, and delineations, consistent with the Sensitive Areas Ordinance, are shown on the Constraint Maps attached hereto as Exhibit "G". The wetland delineations and types outlined in the Constraints Map as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped and described boundary shall prevail.

#### **8.2.2 Fish and Wildlife Habitat Conservation Areas Final**

The presence and typing of Fish and Wildlife Conservation Areas within The Villages MPD are shown on the Constraints Map. These Fish and Wildlife Habitat Conservation Areas, types and buffers as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger, than what was mapped, the mapped boundary shall prevail.

### **8.2.3 Mine Hazard Areas**

Mine hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Maps. These mine hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

### **8.2.4 Seismic Hazard Areas**

Seismic hazard areas for The Villages MPD were evaluated in the EIS's Appendix D and are shown on the Constraints Map. The seismic hazard areas for The Villages MPD as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction is it discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail.

## **8.3 ALTERATION OF GEOLOGICALLY HAZARDOUS AND LANDSLIDE HAZARD AREAS**

The Designated Official may allow alteration and/or elimination of geologic hazard and landslide hazard areas through the clearing and grading permit process provided that the standards of BDMC 19.10.410(C)(1)(b)(i) through (v) (Exhibit "E") are met. This provision does not apply to alteration of geologically hazardous or landslide hazard areas within wetlands or fish and wildlife conservation areas or their associated buffers.

## **8.4 HAZARDOUS TREE REMOVAL**

The Master Developer or Homeowners' Association may engage a certified arborist to review potential hazard trees located within sensitive areas and buffers. Pursuant to Condition of Approval No. 86 of the MPD Permit Approval, The Master Developer or Homeowners' Association may submit a request to the City to remove hazardous trees consistent with BDMC 19.30 (Exhibit "E"). If tree removal is required the replacement ratio shall be a minimum of a 2:1 tree replacement ratio. If appropriate, trees may be left as snags or dropped and left in the buffer for habitat purposes with the goal to leave the majority of the sensitive areas designated

as passive Open Space, but appearing like a native forest, while protecting adjoining uses from the risks of falling trees.



## 9.0 PARKS, OPEN SPACE AND TRAIL STANDARDS

### 9.1 OVERALL OPEN SPACE REQUIREMENT

Pursuant to BDMC 18.98.140 (Exhibit “E”) and the MPD Permit Approval, The Villages MPD is required to provide at least 481.4 acres of Open Space. The Black Diamond Urban Growth Area Agreement between King County, the City, Palmer Coking Coal Company, and Plum Creek Timber Company dated December 31, 1996 (“BDUGAA”) requires 145 acres of Open Space on those Development Parcels subject to the BDUGAA. The Master Developer shall provide the additional, approximate 336.4 acres for those properties not subject to the BDUGAA within the Project Site. Open Space meeting these requirements is shown on the MPD Site Plan (Exhibit “A”) and in the following table.

**Table 9-1 Open Space Calculations**

|                                     | Gross Acres | BDUGAA/<br>Open Space<br>requirement | MPD<br>requirement<br>(if applicable) | <b>Required<br/>Open Space*</b> |
|-------------------------------------|-------------|--------------------------------------|---------------------------------------|---------------------------------|
| Parcel B                            | 81.53       | 0                                    | 40.77                                 | 40.77                           |
| West Annexation Area                |             | 63.30                                | 0                                     | 63.30                           |
| Parcel C                            | 54.62       |                                      |                                       |                                 |
| Parcel D                            | 225.99      |                                      |                                       |                                 |
| Parcel G                            | 8.06        |                                      |                                       |                                 |
| Guidetti Parcel                     | 20.38       | 0                                    | 10.19                                 | 10.19                           |
| Parcel E                            | 151.15      | 0                                    | 75.58                                 | 75.58                           |
| Parcel F-North                      | 258.90      | 81.70                                | **12.00                               | 93.7                            |
| BDA                                 | 395.74      | 0                                    | 197.87                                | 197.87                          |
| Total In City/UGA<br>MPD Open Space | 1196.40     | 145                                  | 336.4                                 | <b>481.4</b>                    |

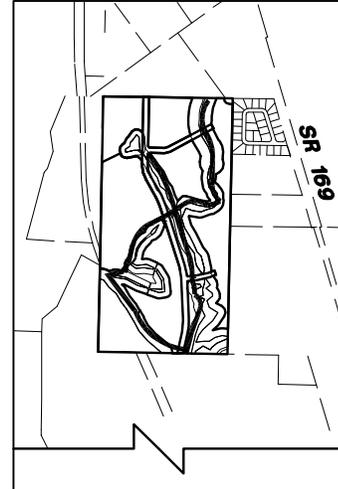
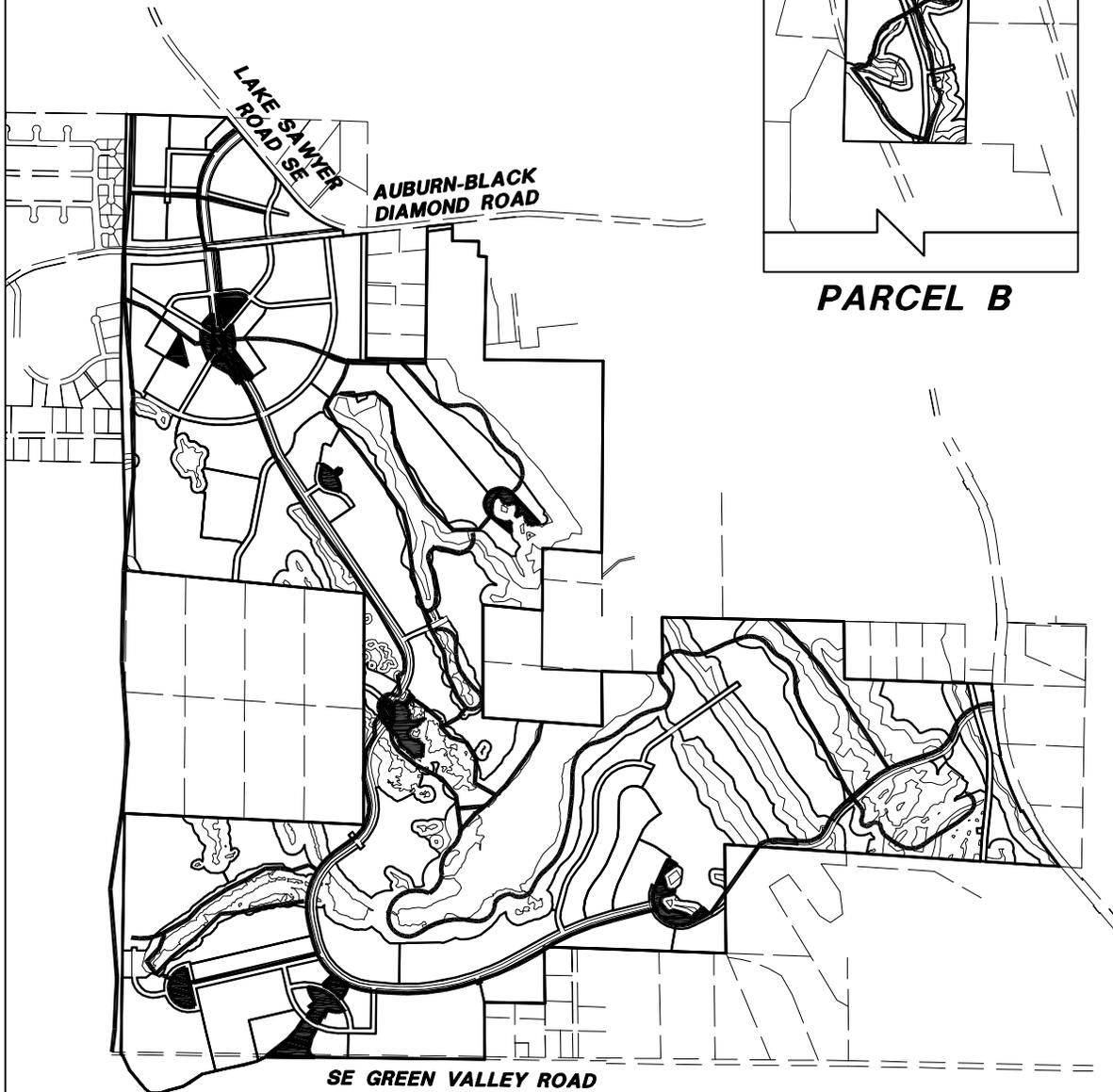
\*Required Open Space to be met within the Project Site

\*\*Reflects 24 acres of property within City boundaries prior to BDUGAA

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**FIGURE 9.2:  
PARK AND TRAIL PLAN**

| LEGEND  |        |
|---|--------|
|  | PARKS  |
|  | TRAILS |



**PARCEL B**

## **9.2 PARK AND OPEN SPACE PLAN**

The approximate location and type of Parks to be provided by the Master Developer are shown on the Park and Trail Plan (Figure 9.2) above. The Master Developer shall design and construct the Parks shown on the Parks and Trail Plan (Figure 9.2). The actual location and boundaries of Parks may vary (provided that the minimum Open Space requirement is met) and will be defined through Implementing Approvals and Projects (for example, adjacent subdivision or site plan). Parks within each Phase of The Villages MPD shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the Phase, whichever occurs first, to the extent necessary to meet park level of service standards for the Implementing Approval or Project. In the event a bond is in place, construction of all Parks within Phase 3 will be triggered when Certificates of Occupancy or final inspection have been issued for 40% of the Dwelling Units on lots located within ¼ mile of a given Park located in Phase 3. Parks must be completed when Certificates of Occupancy or final inspection has been issued for 60% of the Dwellings Units located within ¼ mile of a given Park in any Phase. Recreation facilities shall be constructed as required by Table 9-5. The Master Developer may elect to build Parks in advance of the triggers set forth in this subsection.

## **9.3 SENSITIVE AREAS AND BUFFERS**

All sensitive areas and buffers will be protected consistent with the Sensitive Areas Ordinance and as further described in this Agreement. Trails, crossings and encroachments may be allowed within sensitive areas and buffers, if such placement is consistent with the Sensitive Areas Ordinance and appropriate mitigation identified therein.

## **9.4 NON-SENSITIVE OPEN SPACE**

Open Space outside of sensitive areas and buffers includes, but is not limited to, the plaza, Community Parks, trails, Neighborhood and Pocket Parks, natural areas and stormwater ponds and infiltration facilities. Additional Parks may be provided as individual Implementing Projects are developed.

Stormwater ponds and facilities shall be designed as either passive or active Open Space when practical. Passive Open Space facilities consisting of stormwater ponds shall be designed to

appear as a natural wetland or pond and shall provide at least one location for public viewing. Vegetation shall consist of no less than 70% native plant material typically found in and around South King County. Any fencing required by BDMC regulations (Exhibit "E") shall be designed and located such that it does not detract from the natural character of the facility. If natural landscaping is intended to provide a long-term barrier to human intrusion, temporary fencing may be permitted until such time as the landscaping has matured to the point of providing the barrier. Stormwater facilities designed as active Parks shall accommodate at least one active use. This may include at least one of the following: a trail extending no less than 75% of the perimeter of the pond; play fields; play structures; and basketball and other sport courts within an infiltration gallery or maximum water elevation designed to accommodate occasional high water level events. Pursuant to Condition of Approval No. 69 of the MPD Permit Approval, to be considered as Open Space, active play areas shall be free of inundation for a minimum of three (3) months out of the year, preferably longer. The Public Works and Natural Resources directors shall make the final determination of whether the stormwater pond or facility proposed may qualify as active or passive recreation (and thus counting towards The Villages MPD's Open Space requirement), or a portion of active recreation, based on submitted plans associated with an Implementing Project.

## **9.5 RECREATION AND USEABLE OPEN SPACE STANDARDS**

**9.5.1** All Dwelling Units shall have access to and be located within ¼ mile walking distance of a Park. If an existing or planned Park is not accessible and is not located within ¼ mile (walking distance) of a proposed Implementing Project, then the Implementing Project shall include a new Park at a rate of 100 square feet per Dwelling Unit to be served by the Park. Parks must be at least 1,500 square feet in size to be counted against The Villages MPD's Park requirements.

**9.5.2** Unless otherwise noted on Table 9-5, Recreational Facilities constructed by the Master Developer, may be located: (1) within The Villages MPD in Community Parks, community center or Neighborhood Parks; (2) on joint use school sites (if agreed to by the City and School District as provided in the School Agreement); (3) within off-site Regional Parks (subject to City agreement); or (4) on a mutually acceptable off-site location. The Recreational Facilities may be provided in combination with one another and other informal space or each facility may be provided as a standalone amenity. Pursuant to Condition of Approval No. 88 of the MPD Permit Approval, if a joint use facility is proposed on a school site or on an alternative site consistent

with the School Agreement, the Master Developer shall provide for one or more youth/adult softball fields, soccer fields, tennis courts or basketball courts in such joint use facility.

**9.5.3** The Master Developer shall have the option to request that the Designated Official accept a lump sum payment in lieu of constructing any of the individual Recreational Facilities in Table 9-5. The request shall be made prior to triggering the need for the next Recreation Facility. Pursuant to Condition of Approval No. 93 of the MPD Permit Approval, the Designated Official retains sole discretion to determine when and if a lump sum payment will be accepted in lieu of the Master Developer constructing a Recreational Facility. The Designated Official's determination shall be based on the following three criteria: (i) availability of land; (ii) adequacy of funds to construct City-approved recreational facilities; and (iii) City's ability to maintain recreational facilities. Pursuant to Condition of Approval No. 91 of the MPD Permit Approval, the amount of the payment that may be provided in lieu of construction shall be set through the following process:

- A. Commencing upon the Designated Official's agreement to accept a lump sum amount for a specific Recreational Facility, the City shall publish a bid request for design and construction of the Recreational Facility. The bid request shall be based on reasonable standards agreed to by the Master Developer and City. The City reserves the right to include additional elements in the bid beyond what the Master Developer is required to construct for the facility. Such additional elements shall not be the responsibility for the Master Developer to fund. For instance, additional elements may include lighting, concession areas, or other elements as determined by the Designated Official.
  
- B. Upon acceptance of a bid, the Designated Official and Master Developer shall agree to set the lump sum amount in accordance with the accepted bid. Upon execution of a contract accepting the bid for design and construction, the Master Developer shall deposit with the City the agreed to lump sum amount.

In the event the Master Developer makes a lump sum payment, the City shall use the funds for the sole purpose of constructing the Recreational Facility. If the Master Developer provides off-

site Recreational Facilities and/or Parks, it shall receive credit equivalent to the credit it would have received if that Recreational Facility and/or Park had been provided on the Project Site.

**9.5.4** Pursuant to Conditions of Approval Nos. 89 and 92, of the MPD Permit Approval, the Master Developer's obligation to provide the Recreational Facilities outlined in Table 9-5 is based on the Level of Service standards set forth in the City's Park and Open Space Plan dated December 18, 2008 (Exhibit "E"). To determine the number of Recreational Facilities required, the number of housing units was multiplied by the following population generation rates: 2.7 persons per Single Family Dwelling Units and 1.85 persons for Multi-Family Dwelling Units.

**9.5.5 Recreation Facilities**

**TABLE 9-5**

| <b>Facility Type</b> | <b>Level of Service</b> | <b>Required Facilities</b> | <b>Timing of Facilities</b>  | <b>Fee-in-Lieu</b>   |
|----------------------|-------------------------|----------------------------|--|--|
| Basketball Court     | 1:2000                  | 6                          | Master Developer shall provide a minimum of one (1) Basketball Court facility per every 800 Dwelling Units constructed. One such facility must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800 <sup>th</sup> , 1600 <sup>th</sup> , 2400 <sup>th</sup> , 3000 <sup>th</sup> , 3600 <sup>th</sup> , and 4800 <sup>th</sup> Unit receiving a Certificate of Occupancy.   | The Master Developer may elect to request that the City accept a fee-in lieu of constructing the required Basketball Courts. The fee shall be set per Section 9.5.3. |
| Soccer Field         | 1:2000                  | 6                          | Master Developer shall provide a minimum of one (1) soccer field per every 800 Dwelling Units constructed. One soccer field must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800 <sup>th</sup> , 1600 <sup>th</sup> , 2400 <sup>th</sup> , 3000 <sup>th</sup> , 3600 <sup>th</sup> , and 4800 <sup>th</sup> Unit receiving a Certificate of Occupancy. Up to three (3) of the required soccer fields shall be designed as Micro Soccer Fields. | The Master Developer may elect to request that the City accept a fee-in lieu of constructing the required soccer fields. The fee shall be set per Section 9.5.3.     |

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| Facility Type                       | Level of Service | Required Facilities | Timing of Facilities  | Fee-in-Lieu  |
|-------------------------------------|------------------|---------------------|---|--|
| Tennis Court                        | 1:2000           | 6                   | Master Developer shall provide a minimum of one (1) tennis court per every 800 Dwelling Units constructed. One tennis court must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800 <sup>th</sup> , 1600 <sup>th</sup> , 2400 <sup>th</sup> , 3000 <sup>th</sup> , 3600 <sup>th</sup> , and 4800 <sup>th</sup> Unit receiving a Certificate of Occupancy.                        | The Master Developer may elect to request that the City accept a fee-in lieu of construction for up to 3 of the tennis courts. The fee shall be set per Section 9.5.3. |
| Youth Baseball/Adult Softball field | 1:2000           | 6                   | Master Developer shall provide a minimum of one (1) Youth Baseball / Adult Softball field per every 800 Dwelling Units constructed. One such field must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 800 <sup>th</sup> , 1600 <sup>th</sup> , 2400 <sup>th</sup> , 3000 <sup>th</sup> , 3600 <sup>th</sup> , and 4800 <sup>th</sup> Unit receiving a Certificate of Occupancy. | The Master Developer may elect to request that the City accept a fee in lieu of constructing the necessary facility. The fee shall be set per Section 9.5.3.           |
|                                     |                  |                     |   |  |

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| <b>Facility Type</b>   | <b>Level of Service</b> | <b>Required Facilities</b> | <b>Timing of Facilities</b>   | <b>Fee-in-Lieu</b>  |
|------------------------|-------------------------|----------------------------|---|---|
| Adult Baseball Diamond | 1:5000                  | 2                          | Master Developer shall provide a minimum of one (1) Adult Baseball Diamond per every 2,400 Dwelling Units constructed. One Adult Baseball Diamond must be Constructed (or, if applicable, a fee-in-lieu paid) prior to the 2400 <sup>th</sup> and 4800 <sup>th</sup> Unit receiving a Certificate of Occupancy. | The Master Developer may elect to request that the City accept a fee in lieu of constructing the necessary facility. The fee shall be set per Section 9.5.3.  |
| Community Center       | 1:10,000                | 1                          | Master Developer shall provide a Community Center prior to the 3,000 <sup>th</sup> Dwelling Unit receiving a Certificate of Occupancy. The Community Center may be co-located with other Recreational Facilities.   | The Master Developer may elect to request that the City accept a fee in lieu of constructing a Community Center and the City accepts the request, the process set forth in Section 9.5.3 shall be followed to determine the fee. A Community Center may be a YMCA, Boys and Girls Club, or other similar facility as determined by the City in its reasonable discretion. |
|                        |                         |                            |   |   |

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| <b>Facility Type</b> | <b>Level of Service</b> | <b>Required Facilities</b> | <b>Timing of Facilities</b>  | <b>Fee-in-Lieu</b>  |
|----------------------|-------------------------|----------------------------|--|---|
| Youth Football Field | 1:10,000                | 1                          | Master Developer shall provide a minimum of one (1) Youth Football Field prior to the 3,000th Dwelling Unit receiving a Certificate of Occupancy.  | The Master Developer may elect to request that the City accept a fee in lieu of construction of the Youth Football Field. The fee shall be set per Section 9.5.3. |
| Gymnasium            | 1:5,000                 | 2                          | If authorized by the Enumclaw School District, the Master Developer shall provide a minimum of two (2) gymnasium facilities in conjunction with the school facilities described in the School Agreement. | The Master Developer may elect to request that the City accept a fee in lieu of constructing a gymnasium. The fee shall be set per Section 9.5.3.                 |
| Track                | 1:10,000                | 1                          | If authorized by the Enumclaw School District, the Master Developer shall provide a minimum of one (1) track in conjunction with the school facilities described in the School Agreement.                | The Master Developer may elect to request that the City accept a fee in lieu of constructing a track. The fee shall be set per Section 9.5.3.                     |

**9.6 TRAIL PLAN**

The approximate location and type of trails are shown on the Park and Trail Plan (Figure 9.2). The Master Developer is responsible for the design and construction of the trails shown on the Park and Trail Plan (Figure 9.2). The actual location of trails may vary and will be defined

through Implementing Approvals and Projects (for example, adjacent subdivision or site plan). The trail system should be designed to minimize trail locations within sensitive area buffers. Any construction within sensitive areas shall be mitigated in accordance with the City's Sensitive Areas Ordinance. Where feasible, trail design and trail construction should avoid dead ends and incomplete segments.

Pursuant to Condition of Approval No. 95 of the MPD Permit Approval, any trail construction necessary to complete the Park and Trail Plan (Figure 9.2) shall be done on an Implementing Project by Implementing Project basis. If any Implementing Project contains a trail segment shown on the Park and Trail Plan (Figure 9.2), then such trail segment shall be designed and constructed up to the boundaries of such Implementing Project. Thus, trails on the Project Site shall be constructed or bonded prior to issuance of a certificate of occupancy, final site plan approval or final plat approval (whichever occurs first) for the Implementing Project within which the particular trail segment is to be built. The construction of trails located outside of the Project Site that are necessary to achieve connectivity may be required by the City prior to the issuance of a certificate of occupancy, final plat approval, or final site plan approval for an Implementing Project to the extent authorized by law. The Master Developer may elect to build trails in advance of the triggers described herein.

## **9.7 TRAIL STANDARDS**

The following criteria shall apply to the construction of trails set forth in this Agreement in addition to, and consistent with, the trail standards set forth in BDMC and Black Diamond Engineering Design and Construction Standards (Exhibit "E"):

### **9.7.1 Trails shall be built to the standards set forth below.**

- A. Hiking trail standards
  - i. Clearing height – 8 feet
  - ii. Clearing width – 4-6 feet (light use); 8-12 feet (heavy, two-way use)
  - iii. Surface – 2-3' wide natural surface with gravel or wood chips in wet areas (light use); 4-8' wide natural surface if possible, otherwise woodchips, gravel, or other suitable material (heavy use)
- B. Bicycle trail standards
  - i. Clearing height – 10 feet maximum

- ii. Clearing width – 6-8 feet (mountain bike); 8 feet (one way touring bicycle), 12 feet (two-way touring bicycle traffic)
  - iii. Surface – 2-3’ wide natural surface (mountain bike); 2” asphalt surface with 3” compacted gravel base (touring bicycle) 4-6’ wide (one way traffic) OR 8’ wide (two way traffic)
- C. Multi-use trail standards
- i. Clearing height – 8 feet for bicycle and pedestrian, 14 feet maximum for equestrian
  - ii. Clearing width - 14-26 feet, depending on use
  - iii. Surface – Paved or natural, similar to standards in A and B above, depending on uses intended. Equestrian uses, where proposed, shall be provided a natural surface separate from a paved surface by at least 3’.

**9.7.2** Trails shall be designed to minimize construction impacts to wetlands, streams and their associated buffers.

**9.7.3** The following amenities may be included within trail corridors subject to mutual agreement between the Master Developer and the Designated Official: rest stops, sculpture and other art, pedestrian lighting, exercise stations, picnic tables, barbeque grills, interpretive areas, Pocket Parks/tot lots, drinking fountains, restrooms, and covered sheds, and other similar amenities.

## **9.8 PARK, OPEN SPACE AND TRAIL DEVIATIONS**

All Park, Recreation Facility, Open Space and trail standards, cross sections and locations may be modified through the deviation process set forth in Section 1.3 of the Black Diamond Engineering Design and Construction Standards (Exhibit “E”).

## **9.9 OWNERSHIP AND MAINTENANCE**

### **9.9.1 Environmentally Sensitive Areas and Buffers**

Pursuant to Condition of Approval No. 153 of the MPD Permit Approval, ownership and maintenance of sensitive areas and buffers shall be consistent with the requirements of the Sensitive Area Ordinance, which allows sensitive area tracts to be held in undivided ownership by all lots within The Villages MPD, dedicated to the City or other governmental entity,

protected with conservation easements or conveyed to a non-profit land trust. If the Master Developer elects not to dedicate an Open Space to the City, a permanent public access easement or other means of access shall be provided to the Open Space as part of the Implementing Project.

### **9.9.2 Non-Sensitive Area Open Space**

All Neighborhood Parks, trails and Community Parks will be owned and maintained by the homeowners' association (HOA) or Master Developer pursuant to the provisions of Subsection 5.5.7 of this Agreement, except for any owned by the school district. Regional Parks may be dedicated to the City at the time of an Implementing Project.

### **9.9.3 Public Access**

Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails unless otherwise determined by the Designated Official.

## **9.10 PARK CHARACTERISTICS**

Pursuant to Conditions of Approval Nos. 97 and 151 of the MPD Permit Approval, the characteristics and uses of passive Open Space and active Open Space are as follows:

- A. Active Open Space includes:
  - areas that provide for organized sport and recreational functions such as sports fields;
  - tot lots;
  - net-games and tennis courts;
  - gathering areas;
  - other similar outdoor sports facilities as allowed by the Designated Official.
  
- B. Passive Open Space outside of sensitive areas regulated by the SAO provides for all other recreational needs, including:
  - scenic purposes;
  - landscape amenities where users can relax and enjoy the space without a specifically organized sporting activity;
  - trails;

- picnic areas;
- open fields, wildlife viewing areas or other informal Open Spaces.

The City and Master Developer acknowledge that the characteristics and uses of Open Space will differ throughout The Villages MPD's various Implementing Projects.

## **10.0 DETERMINATIONS, AMENDMENTS & EXPANSION PARCEL REVIEW PROCESS**

### **10.1 RESERVED**

### **10.2 APPLICABILITY**

This Section applies to requests to clarify the requirements or meaning of this Agreement by the Designated Official, the Master Developer, or the Master Developer Transferee; the addition of Expansion Parcels, and to proposed changes (“Amendments”) to the provisions contained within the MPD Permit Approval or this Agreement. Provided, however, that nothing in this Agreement provides the City with the authority to clarify the requirements of or issue an interpretation regarding Exhibit “Q” or Exhibit “R”.

### **10.3 DETERMINATIONS**

Any dispute between the Master Developer (or the Master Developer Transferee) and the Designated Official over the terms of this Agreement shall be resolved first by the Mayor or the Mayor’s designee. The Mayor shall decide in writing within fourteen (14) days of receiving a written request for clarification of this Agreement. The Mayor’s written decision may be appealed by the Designated Official or the Master Developer to the Hearing Examiner within ten (10) Days. The City shall hold a hearing on the appeal within thirty (30) Days following the date upon which the request for an appeal to the Hearing Examiner is filed. Any subsequent appeals of the written decision shall be by declaratory judgment pursuant to Chapter 7.24 RCW. The appealing party shall exhaust its remedies as set forth herein prior to exercising its remedies as set forth in Subsection 15.13.

#### **10.3.1 Determination of Use Category**

In addition to determinations regarding the terms of this Agreement as provided above in Section 10.3, all questions from the Master Developer regarding what use category a particular use falls within shall be determined pursuant to BDMC 18.04.070 (Exhibit “E”).

## **10.4 AMENDMENTS**

### **10.4.1 Amendments to the MPD Permit Approval**

An Amendment to The Villages MPD Permit Approval may be requested by the Master Developer or Master Developer Transferee pursuant to the standards adopted in BDMC 18.98.100 (Exhibit “E”) and as further described herein. An Amendment to the MPD Permit Approval shall be considered Minor if it meets all of the criteria set forth in BDMC 18.98.100 (Exhibit “E”).

The processes for reviewing Major and Minor Amendments to the MPD Permit Approval are outlined in Subsection 12.8.14 of this Agreement.

### **10.4.2 Amendments to the Development Agreement**

An Amendment to this Agreement may be requested by either the Master Developer or the City pursuant to the standards outlined herein. Amendments to this Agreement that materially modify the intent and policy of this Agreement shall be considered “Major” and shall be reviewed by the same procedures applicable to a new development agreement request. Amendments that do not materially modify the intent and policy of this Agreement shall be considered “Minor” and may be approved by the Mayor. The final determination regarding whether an Amendment to this Agreement is Minor or Major shall rest with the Designated Official, subject to appeal to the Hearing Examiner.

## **10.5 EXPANSION PARCELS**

The Master Developer may acquire and add certain Expansion Parcels to the MPD requiring either a Minor or Major Amendment of the MPD Permit Approval and additional State Environmental Policy Act (“SEPA”) review. If a defined Expansion Parcel is neither designated with an MPD Overlay on the City’s Comprehensive Plan Future Land Use Map nor is zoned MPD, then a Comprehensive Plan Amendment and rezone shall be required.

### **10.5.1 Expansion Parcel Review Process**

Pursuant to Conditions of Approval Nos. 134 and 162 of the MPD Permit Approval, any or all of the Expansion Parcels may be developed during the Build-Out Period subject to the following process and requirements:

- A. Written notice (“Expansion Proposal”) is provided to the City by the Master Developer of its intention to develop the Expansion Parcel(s); and
- B. The Master Developer must have ownership or control of the Expansion Parcel(s) or the Master Developer and the owner(s) of the Expansion Parcel must agree that the Expansion Parcel will be subject to the requirements of the MPD Permit Approval and this Agreement; and
- C. The Expansion Proposal from the Master Developer shall include the location of proposed uses (including density ranges, i.e. MPD-L, MPD-M, and MPD-H) and Open Space on the Expansion Parcel(s); a conceptual street plan showing the location of any proposed minor arterials and collectors on the Expansion Parcel(s); and conceptual water, sewer and stormwater plans of the Expansion Parcel(s); and
- D. The Expansion Proposal complies with the requirements of the State Environmental Policy Act as described in Subsection 10.5.2; and
- E. The Expansion Proposal shall be reviewed using the process and procedures for either a Minor or Major Amendment to the MPD Permit Approval pursuant to Section 12.8.14 and BDMC 18.98.100 (Exhibit “E”), respectively.
- F. The Master Developer shall provide the following:
  - i. An updated Exhibit “A” which shall show the uses (including density ranges, i.e. MPD-L, MPD-M, and MPD-H) for the Expansion Parcels to be included; and
  - ii. An updated Phasing Plan as provided in Exhibit “K” which shall either amend existing Phases or propose additional Phases for the Expansion Parcels. In addition to updating the exhibit, appropriate revisions to Section 11 of this Agreement shall be provided; and
  - iii. An updated fiscal analysis, which will include any additional or new infrastructure that is necessary to serve the Expansion Parcels; and
  - iv. Updated constraints maps showing constrained areas pursuant to the City’s Sensitive Areas Ordinance (Exhibit “E”); and
  - v. Updated figures in Sections 7 and 9 of this Agreement.

**10.5.2 Compliance with the State Environmental Policy Act (SEPA)**

Adding one or more Expansion Parcels to the Project Site, without a proposal for an increase in Dwelling Units or nonresidential Development above the limits set forth in Sections 4.1 and 4.2 of this Agreement, constitutes a proposal that is substantially similar to that covered in the EIS for The Villages MPD. Therefore, the SEPA review process for adding Expansion Parcels shall follow WAC 197-11-600(4)(e) and WAC 197-11-630(3)(c). To complete this process, the Master Developer shall prepare a SEPA addendum or other appropriate document, as determined by the City's SEPA Responsible Official, which discloses and evaluates impacts, if any, which were not addressed in the EIS for the original Project Site, such as impacts to elements of the natural environment located on the Expansion Parcels or additional traffic impacts. The City shall review the SEPA addendum or other appropriate document and then either accept it or request additional information and analysis from the Master Developer. When the SEPA addendum or other appropriate document is complete, the City shall issue appropriate notification together with the appropriate documentation and circulate both as required under WAC 197-11-630(3)(c) and (3)(a), to add the Expansion Parcels.

**10.5.3 The Impact of the Addition of Expansion Parcels to the Vested Status of the MPD  
Permit Approval**

The addition of one or more Expansion Parcels to the Project Site shall have no effect on the vested status of the MPD Permit Approval.

## **11.0 PROJECT PHASING**

### **11.1 MPD PHASING PLAN APPROVED**

Per Condition of Approval No. 3 of the MPD Permit Approval, the MPD Phasing Plan contained in Chapter 9 of the MPD Permit Application, and attached hereto as Exhibit “K”, was approved by the Black Diamond City Council with the exception of the bonding proposal at p. 9-3, the proposal for off-site trails p. 9-2 (to the extent not already considered a regional facility), and the proposal for parks at p. 9-10. Exhibit “K” shows as stricken the portions of Chapter 9 not approved by the City Council.

As noted on the approved MPD Phasing Plan on p. 9-1 (Exhibit “K”), the MPD Phasing Plan is “subject to change” and is only “an estimate of the improvements that will be needed for the project. It may change as a result of final mitigation agreements resulting from the MPD...” Conditions of Approval Nos. 10, 49, 51, 52, and 58 of the MPD Permit Approval all anticipate that alternative or functionally equivalent transportation, water, and sewer infrastructure improvements may be approved by City staff. Based on existing conditions (including market demand and City infrastructure) and current technology, the City and Master Developer have agreed to the infrastructure improvements listed in the tables included in this Section 11.

### **11.2 PHASING OF IMPROVEMENTS**

Pursuant to Conditions of Approval Nos. 4, 63, and 163 of the MPD Permit Approval, this Section describes the phasing and timing of infrastructure within and outside of The Villages MPD. However, as noted on p. 9-1 of the approved MPD Phasing Plan (Exhibit “K”):

The order is not intended to be absolute and represents likely phases based on current market conditions. Phases may be started concurrently. . . . In general, the infrastructure necessary for each phase for each MPD is dependent on the infrastructure built in preceding phases for that MPD. . .

Phases may ultimately be built simultaneously. Accordingly, infrastructure and timing of Development different from the MPD Phasing Plan (Exhibit “K”) may be proposed by the Master Developer, without an amendment to the MPD Permit Approval or this Agreement,

based on the needs and timing of specific Implementing Projects and technological advancements.

Pursuant to Conditions of Approval Nos. 29 and 164, before the first Implementing Project of any Phase is approved by the City, a more detailed implementation schedule of the Regional Facilities supporting that Phase shall be submitted to the City for approval. The timing of construction of the Regional Facilities shall be tied to the number of Dwelling Units and/or square feet of commercial in Implementing Projects.

### **11.3 PHASING AND CONSTRUCTION OF ON-SITE REGIONAL FACILITIES**

**A. Phasing.** On-site Regional Facilities are Regional Facilities located within the Project Site and/or the Lawson Hills MPD site. Some on-site Regional Facilities located within the Project Site provide service to the Lawson Hills MPD site and vice versa. Therefore, on-site Regional Facilities shall be evaluated and provided as Development of The Villages MPD and the Lawson Hills MPD occurs. The capacity of the existing transportation, water, sewer, stormwater and Park systems serving a specific Implementing Project proposal must be evaluated during the development review process for that Implementing Project. Implementing Approvals are allowed up to the point of existing capacity. If, based on an Implementing Project specific evaluation, there are insufficient infrastructure facilities or capacity to serve some or all of the specific Implementing Project, infrastructure improvements necessary to provide adequate capacity shall be required as a condition of that project. Timing, design, and necessity of such infrastructure improvements must be consistent with provisions of Sections 6 and 7 of this Agreement and the Traffic Monitoring Plan (Exhibit "F"). Model Homes are exempt from this requirement.

**B. Construction and Funding.** Except as provided in the WSFFA and Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the on-site Regional Facilities identified in Tables 11-3-1, 11-3-2, 11-3-3, and 11-3-4 below. For purposes of this Section 11 and because Regional Facilities were evaluated based upon both the needs of The Villages MPD and the Lawson Hills MPD, anytime funding or construction responsibility for Regional Facilities is assigned to the Master Developer, the Master Developer may, pursuant to a separate agreement and with written notice to the City, transfer or allocate

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such responsibility (or a portion thereof) to the master developer of the Lawson Hills MPD. While the Master Developer of either the Lawson Hills MPD or The Villages MPD may elect to construct certain facilities prior to a demonstrated need to obtain adequate capacity, nothing in this Section 11 shall be construed to require the Master Developer of either Lawson Hills MPD or The Villages MPD to Construct any infrastructure facility, or pay one hundred percent (100%) of any infrastructure facility cost, which is unnecessary to provide adequate capacity for an Implementing Project of the Lawson Hills MPD or The Villages MPD, respectively.

If the Master Developer elects to construct Regional Facilities or projects from the City's Capital Improvements Plan ("CIP"), it may seek reimbursement for costs incurred to Construct any or all of the necessary on-site Regional Facilities in excess of the Master Developer's proportionate share (except from "Exempt Properties," as defined below). The Master Developer may recover costs in excess of its proportionate share (except from "Exempt Properties," as defined below) using methods approved and allowed by City Code, state law, and existing agreements (e.g., WSFFA), including grant funding and mitigation payments received by the City for growth-related impacts, including impacts occurring outside the City's boundaries. The following parameters shall govern any Master Developer request for reimbursement:

The City and Master Developer acknowledge that the practical and efficient application of reimbursement based on the Master Developer's proportionate share might not provide complete equity for small-scale infill-type development where there is existing City infrastructure. For this reason, small-scale infill-type development shall be exempt from proportionate share cost recovery for on-site Regional Facilities provided by the Master Developer. "Exempt Properties" are defined as single lot land use applications (with less than 4 ERUs of development), less than 5-lot land use applications (with less than 4 ERUs of development) and commercial Land Use Permits (with less than 4 ERUs of development), up to a maximum of 550 ERUs (outside of The Villages and Lawson Hills MPDs). Exempt Properties shall be charged the appropriate and applicable City connection charges, impact fees and development charges consistent with City Code, but shall not be charged their proportionate share of costs for on-site Regional Facilities Constructed by the Master Developer.

If and only if the benefit area cannot be unambiguously assigned (e.g., an intersection project that provides service to the entire City), the Master Developer's reimbursement for on-site Regional Facility construction costs in excess of its proportionate share shall be calculated

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based on the assumption that 10,500 ERUs are benefitted. For example, a 10-lot residential subdivision that was required to pay its proportionate share costs to the Master Developer for a given on-site Regional Facility would pay 0.000952 times the Master Developer’s cost for the applicable infrastructure facility (10/10,500).

Notwithstanding anything to the contrary above, the City shall work in good faith and use reasonable best efforts to: (i) apply for grants and use funds awarded under such grants; and (ii) seek mitigation payments for impacts associated with growth occurring outside the City boundaries pursuant to the State Environmental Policy Act (“SEPA”), to reimburse the Master Developer for the on-site Regional Facilities construction costs it incurs in excess of its proportionate share.

**Table 11-3-1  
Lawson Hills and The Villages MPDs Phase 1A On-Site Regional Facilities**

| Project Description<br>(see Exhibit “K” MPD Phasing Plans)  | Funding Responsibility |                  |             |
|---|------------------------|------------------|-------------|
|   | City                   | Master Developer | King County |
| The Villages MPD Community Connector which is the first segment of roadway providing access and utilities to Development in Phase 1A. |                        | X                |             |
| Neighborhood street with bike lane providing The Villages MPD secondary Phase 1A access.  |                        | X                |             |
| Frontage improvements in SE-Auburn-Black Diamond Road. These will be constructed in phases as Phase 1A develops.                      |                        | X                |             |
| Intersection improvements at the intersection of Community Connector and SE Auburn-Black Diamond Road.                                |                        | X                |             |
| Intersection improvements at Auburn-Black Diamond Road/Lake Sawyer Road and neighborhood street.                                      |                        | X                |             |
| The Villages MPD small interim wastewater pumping station.  |                        | X                |             |
| Interim stormwater pond and infiltration facility (The Villages MPD Phase 1A).  |                        | X                |             |
| Park at roundabout in The Villages MPD Parcel C.  |                        | X                |             |
| Central park in The Villages MPD Parcel C.  |                        | X                |             |

**Table 11-3-2  
Lawson Hills and The Villages MPDs Phase 1B On-Site Regional Facilities**

| Project Description<br>(see Exhibit "K" MPD Phasing Plans)                                   | Funding Responsibility |                  |             |
|--|------------------------|------------------|-------------|
|  | City                   | Master Developer | King County |
| Community Connector between Lake Sawyer Road and Auburn-Black Diamond Road through Parcel C. |                        | X                |             |
| North connector serving North Triangle and Parcel B.   |                        | X                |             |
| Frontage improvements on Parcel C along Lake Sawyer Road.                                    |                        | X                |             |
| Small, interim wastewater pumping station in The Villages MPD Parcel B.                      |                        | X                |             |
| Wastewater storage facility, if required.  |                        | X                |             |
| Wastewater force main and rough grade access.  |                        | X                |             |
| Dual transmission main in Roberts Drive (850 loop) to The Villages MPD Main Property.        | <u>See WSFFA</u>       |                  |             |

**Table 11-3-3  
Lawson Hills and The Villages MPDs Phase 2 On-Site Regional Facilities**

| Project Description<br>(see Exhibit "K" MPD Phasing Plans)  | Funding Responsibility |                  |             |
|---|------------------------|------------------|-------------|
|   | City                   | Master Developer | King County |
| Extend Community Connector on South to serve The Villages MPD Phase II development area.                        |                        | X                |             |
| Construct neighborhood street from community connector to interim pumping station in The Villages MPD Parcel D. |                        | X                |             |
| Construct north connector through Parcel B.   |                        | X                |             |
| Lawson Parkway serving Lower Lawson Hill MPD and rough grade haul road.   |                        | X                |             |
| Lawson street frontage improvements along Lawson St.  |                        | X                |             |
| Lawson Hills MPD wastewater storage facility, if required.  |                        | X                |             |

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| Project Description<br>(see Exhibit "K" MPD Phasing Plans)                          | Funding Responsibility |                  |             |
|---|------------------------|------------------|-------------|
|   | City                   | Master Developer | King County |
| Stormwater quality and infiltration pond on The Villages MPD Parcel D.              |                        | X                |             |
| Lawson Hills MPD South stormwater detention and water quality pond.                 |                        | X                |             |
| The Villages MPD Parcel E stormwater detention and water quality pond.              |                        | X                |             |
| Stormwater facility on Lawson Hills MPD hammerhead.                                 |                        | X                |             |
| The Villages MPD Parcel B South stormwater detention and water quality pond.        |                        | X                |             |
| Intersection improvements at Lawson Parkway/Lawson Street/Botts Drive intersection. |                        | X                |             |

**Table 11-3-4  
Lawson Hills and The Villages MPDs Phase 3 On-Site Regional Facilities**

| Project Description<br>(see Exhibit "K" MPD Phasing Plans)            | Funding Responsibility |                  |             |
|---|------------------------|------------------|-------------|
|   | City                   | Master Developer | King County |
| Water line extension from The Villages MPD Parcel BDA to SR 169.      |                        | X                |             |
| Interim large wastewater pump station on The Villages MPD Parcel BDA. |                        | X                |             |
| Small wastewater pump station on The Villages MPD Parcel F.           |                        | X                |             |
| Lawson Hills MPD water pump station.                                  |                        | X                |             |
| Upper Lawson Hills MPD zone 1175 reservoir.                           |                        | X                |             |
| Regional Stormwater Facility for The Villages MPD Main Property.      |                        | X                |             |
| Stormwater facility for The Villages MPD east basin.                  |                        | X                |             |
| Parcel B west stormwater facility.                                    |                        | X                |             |
| North Lawson Hills MPD stormwater ponds.                              |                        | X                |             |

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| Project Description<br>(see Exhibit “K” MPD Phasing Plans) | Funding Responsibility |                  |             |
|--|------------------------|------------------|-------------|
|  | City                   | Master Developer | King County |
| North Main Lawson Hills MPD stormwater facility.           |                        | X                |             |
| Upper Lawson Hills MPD stormwater pond.                    |                        | X                |             |

**11.4 PHASING AND CONSTRUCTION OF OFF-SITE REGIONAL INFRASTRUCTURE IMPROVEMENTS**

**A. Phasing.** Off-Site Regional Facilities are Regional Facilities that are located outside the Project Site and the boundaries of the Lawson Hills MPD. Off-Site Regional Facilities necessary to serve The Villages MPD and Lawson Hills MPD are described in Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2. Transportation improvements located in the Cities of Maple Valley and Covington, however, are not included in Tables 11-5-1 and 11-5-2 because these improvements are addressed in the separate mitigation agreements attached as Exhibits “Q” and “R”, respectively.

Since the off-Site Regional Facilities necessary to serve The Villages MPD and the Lawson Hills MPD at the end of the Build-Out Period are substantially more than will be needed to serve The Villages MPD during its initial Phases, construction of off-site Regional Facilities is tied to thresholds that trigger construction of the infrastructure facility as described in the following tables. Prior to the approval of the first Implementing Project in a defined Phase, a detailed table of the Regional Facilities supporting that Phase, similar to Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2, which shall include a “construction threshold,” or as to transportation, documents that result of the Traffic Monitoring Plan (Exhibit “F”), shall be submitted to the Designated Official for approval. Occupancy of an Implementing Project that exceeds the construction threshold is allowed after the necessary Regional Facility has been permitted. This ensures that necessary off-site Regional Facilities are provided to serve Implementing Projects as they occur. Model Homes are exempt from this requirement.

**B. Construction and Funding.** Except as provided in the WSFFA and Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the off-site Regional Facilities identified in Tables 11-4-1, 11-4-2, 11-5-1, and 11-5-2 below. For

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purposes of this Section 11 and because Regional Facilities were evaluated based upon both the needs of The Villages MPD and the Lawson Hills MPD, anytime funding or construction responsibility for Regional Facilities is assigned to the Master Developer, the Master Developer may, pursuant to a separate agreement and with written notice to the City, transfer or allocate such responsibility (or a portion thereof) to the master developer of the Lawson Hills MPD. While the Master Developer of either the Lawson Hills MPD or The Villages MPD may elect to construct certain facilities prior to a demonstrated need to obtain adequate capacity, nothing in this Section 11 shall be construed to require the Master Developer of either Lawson Hills MPD or The Villages MPD to Construct any infrastructure facility, or pay one hundred percent (100%) of any infrastructure facility cost, which is unnecessary to provide adequate capacity for an Implementing Project of the Lawson Hills MPD or The Villages MPD, respectively.

If the Master Developer elects to construct Regional Facilities or projects from the City's Capital Improvements Plan ("CIP"), it may seek reimbursement for costs incurred to Construct any or all of the necessary off-site Regional Facilities in excess of the Master Developer's proportionate share (except from "Exempt Properties"). The Master Developer may recover costs in excess of its proportionate share (except from "Exempt Properties") using methods approved and allowed by City Code, state law, and existing agreements (e.g., WSFFA), including grant funding and mitigation payments received by the City for growth-related impacts, including impacts occurring outside the City's boundaries. The following parameters shall govern any Master Developer request for reimbursement:

The City and Master Developer acknowledge that the practical and efficient application of reimbursement based on the Master Developer's proportionate share might not provide complete equity for small-scale infill-type development where there is existing City infrastructure. For this reason, small-scale infill-type development shall be exempt from proportionate share cost recovery for off-site Regional Facilities provided by the Master Developer. "Exempt Properties" are defined as single lot land use applications (with less than 4 ERUs of development), less than 5-lot land use applications (with less than 4 ERUs of development) and commercial land use permits (with less than 4 ERUs of development) up to a maximum of 550 ERUs (outside of The Villages and Lawson Hills MPDs). Exempt Properties shall be charged the appropriate and applicable City connection charges, impact fees and

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development charges consistent with City Code, but shall not be charged their proportionate share of costs for off-site Regional Facilities Constructed by the Master Developer.

If and only if the benefit area cannot be unambiguously assigned (e.g., an intersection project that provides service to the entire City), the Master Developer’s reimbursement for off-site Regional Facility construction costs in excess of its proportionate share shall be calculated based on the assumption that 10,500 ERUs are benefitted. For example, a 10-lot residential subdivision that was required to pay its proportionate share costs to the Master Developer for a given on-site Regional Facility would pay 0.000952 times the Master Developer’s cost for the applicable infrastructure facility (10/10,500).

Notwithstanding anything to the contrary above, the City shall work in good faith and use reasonable best efforts to: (i) apply for grants and use funds awarded under such grants; and (ii) seek mitigation payments for impacts associated with growth occurring outside the City boundaries pursuant to the State Environmental Policy Act (“SEPA”), to reimburse the Master Developer for the off-site Regional Facilities construction costs it incurs in excess of its proportionate share.

**11.4.1 Off-Site Sewer Regional Facilities**

**Table 11-4-1**

| <b>Phase</b> | <b>Description</b><br>(see Exhibit “K”<br>MPD Phasing<br>Plans)                   | <b>Construction<br/>Threshold</b>  | <b>Funding<br/>Responsibility</b> | <b>Construction<br/>Responsibility***</b>                     |
|--------------|---|--|-----------------------------------|---|
| 1A           | Wastewater storage facility sufficient to serve proposal (facility may be phased) | Prior to issuance of the Certificate of Occupancy for the Dwelling Unit that uses the 1150 <sup>th</sup> ERU | Master Developer                  | Master Developer or King County Wastewater Treatment Division |

**11.4.2 Off-Site Water Regional Facilities**

**Table 11-4-2**

| <b>Phase</b> | <b>Description</b><br>(see Exhibit “K”<br>MPD Phasing Plans)            | <b>Construction<br/>Threshold</b>   | <b>Funding<br/>Responsibility</b> | <b>Construction<br/>Responsibility***</b> |
|--------------|---|---|-----------------------------------|---|
| 1A           | Water Main Upgrade/Extension Roberts Rd. and SE Auburn Black Diamond Rd | First Dwelling Unit or commercial/multi-family occupancy  | WSFFA Funding Responsibility      | City                                      |
| 1B           | Off-Site water main parallel loop                                       | Prior to issuance of the Certificate of Occupancy for the Dwelling Unit that uses the 1019 <sup>th</sup> ERU, as necessary to supply fire flow required for a specific Implementing Project, or as updated modeling may allow | WSFFA Funding Responsibility      | City                                      |
| 1B           | Off-Site Water main extension in SR 169                                 | As necessary to supply fire flow required for a specific Implementing Project   | Master Developer                  | Master Developer                          |

\*\* Need determined based on water system modeling

\*\*\* Parties may reassign or delegate construction responsibility by mutual agreement

**11.5 TRANSPORTATION REGIONAL FACILITIES**

**A. Timing:** Pursuant to Conditions of Approval Nos. 10, 18, and 34 of the MPD Permit Approval, the timing associated with the construction of the transportation improvements outlined in Tables 11-5-1 and 11-5-2 is subject to the Traffic Monitoring Plan set forth in Exhibit “F”. While some of these transportation improvements are shown on the figures associated with Phases contained in Exhibit “K,” the timing shown is only approximate. Pursuant to Condition of Approval No. 20 of the MPD Permit Approval, the actual timing of construction of

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the transportation improvements outlined in Tables 11-5-1 and 11-5-2 shall be governed by the Traffic Monitoring Plan.

**B. Construction and Funding:** The transportation impacts of the Villages MPD were assessed based on the cumulative impacts of The Villages MPD and the Lawson Hills MPD in the EIS. During any time period in which The Villages MPD proceeds before the Lawson Hills MPD or vice versa, the transportation mitigation obligations shown in Tables 11-5-1 and 11-5-2 and triggered by the Traffic Monitoring Plan shall be borne by the MPD that is proceeding alone. During any time period in which both MPDs are proceeding, the transportation mitigation obligations outlined in Tables 11-5-1 and 11-5-2 will be shared by The Villages and the Lawson Hills MPDs on a proportionate share basis. Pursuant to Condition of Approval No. 19 of the MPD Permit Approval, for each potential signal listed below, the Master Developer shall first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control.

**Table 11-5-1. Transportation Intersection Improvements**

| <u>Phase</u> | <u>Study Intersection</u>                 | <u>Jurisdiction</u> | <u>Mitigation</u>   | <u>Funding Responsibility</u> <sup>1</sup> |
|--------------|---|---------------------|---|--|
| 1B           | SE 288th Street/216th Avenue SE           | Black Diamond       | Signalize. Add NBR turn pocket.   | Master Developer                           |
| 3            | SE 288th Street/232nd Avenue SE           | Black Diamond       | Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach. | Master Developer                           |
| 1B / 3       | SR 169/SE 288th Street                    | WSDOT               | Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).                       | Master Developer                           |
| 2            | SE Covington Sawyer Road/ 216th Avenue SE | Black Diamond       | Add EBL, NBL and SBR turn pockets.  | Master Developer                           |

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| <b><u>Phase</u></b> | <b><u>Study Intersection</u></b>                        | <b><u>Jurisdiction</u></b> | <b><u>Mitigation</u></b>                                    | <b><u>Funding Responsibility</u></b> <sup>1</sup> |
|---------------------|---|----------------------------|---|---|
| 1B / 2              | SE Auburn Black Diamond Road/<br>218th Avenue SE        | King County                | Provide a refuge for NBL turning vehicles on EB approach.   | Master Developer                                  |
| 1A                  | SE Auburn Black Diamond Road/<br>Lake Sawyer Road SE    | Black Diamond              | Signalize. Add WBL turn pocket.                             | Master Developer                                  |
| 1A                  | Roberts Dr <sup>1</sup> /<br>Morgan Street              | Black Diamond              | Roundabout.   | Master Developer                                  |
| 1A / 3              | SR 169/Roberts Drive                                    | Black Diamond/<br>WSDOT    | Add second SBT and NBT lanes. Add SBL and NBL turn pockets. | Master Developer                                  |
| 1A / 3              | SR 169/SE Black Diamond Ravensdale Road (Pipeline Road) | Black Diamond/<br>WSDOT    | Add second SBT and NBT lanes. Add SBL turn pocket.          | Master Developer                                  |
| 3                   | SR 169/Baker Street                                     | Black Diamond/<br>WSDOT    | Signalize.  | Master Developer                                  |
| 3                   | SR 169/Lawson Road                                      | Black Diamond/<br>WSDOT    | Signalize. Add SBL turn pocket.                             | Master Developer                                  |
| 3                   | SR 169/Jones Lake Road (SE Loop Connector)              | Black Diamond/<br>WSDOT    | Signalize. Add WBL, NBL, and SBL turn pockets.              | Master Developer                                  |
| 3                   | SR 169/SE Green Valley Road                             | WSDOT                      | Signalize.  | Master Developer                                  |
| 1B                  | SE Auburn-Black Diamond Road/ SE Green Valley Road      | King County                | Provide a refuge on EB approach for NBL turning vehicles.   | Master Developer                                  |

<sup>1</sup> Referred to as "SE Auburn Black Diamond Road" in Exhibit 6-1 of Condition of Approval No. 15 of the MPD Permit Approval.

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| <b><u>Phase</u></b> | <b><u>Study Intersection</u></b>               | <b><u>Jurisdiction</u></b> | <b><u>Mitigation</u></b>   | <b><u>Funding Responsibility</u></b> <sup>1</sup> |
|---------------------|--|----------------------------|--|---|
| 1B / 3              | SR 169/North Connector                         | Black Diamond/<br>WSDOT    | Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection. | Master Developer                                  |
| 1B/ 2               | Lake Sawyer Road/Pipeline Road                 | Black Diamond              | Signalize. Add EBL, WBL, NBL, and SBR turn pockets.  | As defined in the BDUGAA                          |
| 3                   | SR 169/South Connector                         | Black Diamond/<br>WSDOT    | Signalize. Add SBR and NBL turn pockets.   | Master Developer                                  |
| 1B                  | SE Kent Kangley Rd/Landsburg Rd SE             | King County                | Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.  | Master Developer                                  |
| 1A                  | SE Auburn Black Diamond Road / Annexation Road | Black Diamond              | Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.   | Master Developer                                  |

<sup>1</sup> See Sections 11.3(B) and 11.4(B) for reimbursement due to Master Developer.

**Table 11-5-2. Transportation Roadway Improvements**

| <b><u>Phase</u></b> | <b><u>Roadway Improvement</u></b> <sup>2</sup>  | <b><u>Funding Responsibility</u></b> <sup>1</sup> |
|---------------------|---|---|
| 1A                  | Construct portion of Annexation Road (Community Connector) from Auburn-Black Diamond Rd south to boundary of Phase IA area      | Master Developer                                  |
| 1A                  | Construct portion of Lake Sawyer Extension (Neighborhood Street) from Auburn-Black Diamond Rd south and west to Annexation Road | Master Developer                                  |
| 1B                  | Construct portion of Annexation Road (Community Connector) from Auburn-Black Diamond Rd north to Lake Sawyer Rd SE              | Master Developer                                  |

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| <b><u>Phase</u></b> | <b><u>Roadway Improvement</u><sup>2</sup></b>  | <b><u>Funding<br/>Responsibility</u><sup>1</sup></b> |
|---------------------|--|--|
| 1B                  | Construct portion of North Connector from SR-169 south to boundary of Phase IB area  | Master Developer                                     |
| 2                   | Continue construction of Annexation Road (Community Connector) from end of Phase IA construction south to boundary of Phase 2 area   | Master Developer                                     |
| 2                   | Continue Construction of North Connector from end of Phase IB construction to Pipeline Road  | Master Developer                                     |
| 2                   | Construct Pipeline Road from SR-169 to Lake Sawyer Rd SE   | Master Developer                                     |
| 2                   | Construct portion of Lawson Connector (Lawson Parkway) from Lawson Street west to boundary of Phase II area  | Master Developer                                     |
| 2                   | Construct portion of Southeast Loop Connector (Lawson Parkway) from Lawson Street east to boundary of Phase II area  | Master Developer                                     |
| 3                   | Continue construction of Lawson Connector (Lawson Parkway) west from end of Phase 2 construction to SR-169   | Master Developer                                     |
| 3                   | Continue construction of Southeast Loop Connector (Lawson Parkway) east from end of Phase 2 construction to project boundary, or pursuant to Conditions of Approval in Ordinance No. 10-947 Nos. 9 and 25 of the MPD Permit Approval, to SR-169 or alternate intersection. | Master Developer                                     |
| 3                   | Complete construction of Annexation Road (Community Connector) and continue with construction of South Connector (Community Connector Extension) to SR-169.  | Master Developer                                     |
| 3                   | Pursuant to Condition of Approval No. 10 of the MPD Permit Approval, construct any remaining roadway alignment improvement, or functionally equivalent alternative, identified in the 2009 City Comprehensive Plan.  | Master Developer                                     |

<sup>1</sup> See Sections 11.3(B) and 11.4(B) for reimbursement due to Master Developer.

<sup>2</sup> Pursuant to Condition of Approval No. 10 of the MPD Permit Approval.

**C.** Pursuant to Condition of Approval No. 15 of the MPD Permit Approval, transportation facilities to be constructed within the Cities of Maple Valley and Covington will be provided pursuant to the terms of Exhibits “Q” and “R”.

### **11.6 OFF-SITE PEDESTRIAN REGIONAL FACILITIES**

Pursuant to Condition of Approval No. 32 of the MPD Permit Approval, and provided an expert study, prepared by the City and paid for by the Master Developer, confirms engineering feasibility and that construction costs will be reasonable and customary, the Master Developer shall provide, prior to issuance of the Certificate of Occupancy for The Village MPD's 200<sup>th</sup> Dwelling Unit, a connecting sidewalk and safe pedestrian connection from the frontage improvements along parcel V13 to the northeast corner of the Guidetti Parcel along Roberts Drive. The City and Master Developer shall work in good faith to seek grants and other funding mechanisms to construct this improvement; however, all construction costs not covered by such grants or funding mechanisms shall be the responsibility of the Master Developer.

### **11.7 PHASING OF DEVELOPMENT**

The sequencing of Implementing Projects, Implementing Approvals, construction completeness and City acceptance of facilities shall be confirmed by the Designated Official, who shall make a finding within each staff report for proposed preliminary plats or binding site plans within The Villages MPD whether required infrastructure and amenities have been scheduled to meet the demands of the future occupants of that specific plat or binding site plan. Pursuant to Condition of Approval No. 153, the details of Open Space protection and dedication follow. Currently, portions of the Project Site are protected by recorded temporary conservation easements in favor of the City. Required Open Spaces shall be identified with each Implementing Project and conserved or conveyed to the City during the final plat process, site plan approval or engineering review. Once Open Space has been adequately conserved or dedicated for the Implementing Project, the City shall, within ten (10) business days, execute a partial release and reconveyance of the conservation easements created pursuant to the Open Space Agreement (as defined in Section 3 of this Agreement) as necessary for the remaining undeveloped lands of the Project Site.

### **11.8 HOUSING TYPES**

Targets for housing types in each Phase of The Villages MPD are shown in Table 4-8-4. These are only targets not requirements. Pursuant to Condition of Approval No. 138 of the MPD Permit Approval, after each Phase of The Villages MPD is completed, the City shall prepare an analysis of affordable housing City-wide. For purposes of this Agreement, Dwelling Units shall

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be deemed “affordable housing” if the upper median income limits as determined by King County are satisfied. That analysis may be used to set specifications for affordable housing in any on-going or future Phase of The Villages MPD.

## **12.0 DEVELOPMENT REVIEW PROCESS**

### **12.1 PURPOSE**

This Section is consistent with the requirements of Condition of Approval No. 158 of the MPD Permit Approval.

### **12.2 APPLICABILITY**

This Section applies to all Implementing Projects within The Villages MPD.

### **12.3 DESIGN REVIEW COMMITTEE**

A Design Review Committee (DRC) shall be established by the Master Developer. The DRC shall ensure that Implementing Projects within The Villages MPD are consistent with the MPD Project Specific Design Standards and Guidelines (Exhibit "H") and the High Density Residential Supplemental Design Standards and Guidelines (Exhibit "I") as applicable, and shall have sole responsibility for ensuring compliance with the DRC Design Guidelines. Except for Utility Permits and permits for Schools as set forth in the School Agreement, all Implementing Project applications, including any formal modifications to Implementing Approvals and ADU applications, must be reviewed by the DRC before the application or formal modification is submitted to the City. All Implementing Project applications (except for School or Utility Permits) must be accompanied by written documentation of DRC approval at the time of submittal to the City. In the event of a conflict, City review requirements supersede those of the DRC. An Implementing Project application submitted without written documentation of DRC approval is not complete and may be rejected by the City.

### **12.4 RESERVED**

### **12.5 APPLICATION REVIEW PROCEDURES**

#### **12.5.1 Procedures Applicable to All Implementing Projects**

##### **A. Informal Feasibility Consultation**

Potential Implementing Project applicants are required to hold a project feasibility meeting with the Master Developer and City staff prior to detailed work by an engineer, architect,

landscape architect or planner. The purpose of this meeting is to work collaboratively with City staff and to eliminate as many potential issues as possible in order for the Implementing Project application to be processed without delay and undue expense. The City will make available all pertinent information that may relate to the proposal and take a collaborative approach to addressing any issues.

**B. Pre-Application Meeting**

A pre-application conference is recommended for all Implementing Permit applications, and is required for all Land Use Applications, Site Plan Review, Commercial Development and residential Development consisting of more than four (4) Dwelling Units per structure. At least one week prior to the pre-application meeting, the Implementing Project applicant shall provide to the City preliminary studies, conceptual sketches, draft text and other materials listed on the pre-application checklist. The purpose of the meeting is to obtain direction from City staff on the consistency of the proposed Implementing Project with the MPD Permit Approval and this Agreement, as well applicable federal, state and local laws.

**C. Submittal Requirements**

Submittal requirements for each permit type are contained in the BDMC (Exhibit "E"). For ease of reference, the applicable submittal requirements are shown in Exhibit "E", including type, detail, and number of copies for an application to be determined to be complete.

**12.6 NOTICE REQUIREMENTS**

**12.6.1 Notice**

Notice shall be provided pursuant to the provisions set forth in BDMC 18.08.120-180 (Exhibit "E"). For clarification:

**A. Minor Amendments to Development Agreement or MPD Permit Approval:**

Minor Amendments to the Development Agreement or MPD Permit Approval shall be noticed as a Type 2 decision type pursuant to BDMC 18.08.125 (Exhibit "E").

**B. Major Amendments to Development Agreement or MPD Permit Approval:**

Notice of Application shall be provided pursuant to BDMC 18.08.120 and 18.08.125 (Exhibit "E"). Public notice of the Major Amendment decision and public hearing on the Major

Amendment shall be provided pursuant to BDMC 18.08.150 and 18.08.180 (Exhibit "E") respectively.

**C. Expansion Proposals:**

1. Expansion Proposals that qualify as Minor Amendments to the MPD Permit Approval: Notice shall be provided pursuant to subsection A above.
2. Expansion Proposals that qualify as Major Amendments to the MPD Permit Approval: Notice shall be provided pursuant to subsection B above.

**D. MPD Site Plan Amendments:**

Amendments to the MPD Site Plan that qualify as Minor Amendments to the MPD Permit Approval shall be noticed pursuant to subsection A above. Amendments to the MPD Site Plan that qualify as Major Amendments to The Villages MPD shall be noticed pursuant to subsection B above.

## **12.7 AMENDMENTS TO IMPLEMENTING APPROVALS**

Amendments to Implementing Approvals may be allowed pursuant to applicable sections of BDMC (Exhibit "E").

### **12.7.1 Minor Amendments**

Minor Amendments shall be processed pursuant to BDMC 18.14.040.A (Exhibit "E").

### **12.7.2 Major Amendments**

Major Amendments shall be processed pursuant to BDMC 18.14.040.B (Exhibit "E").

## **12.8 APPLICABILITY, DECISION CRITERIA AND APPROVAL SPECIFIC REQUIREMENTS**

### **12.8.1 Construction Permits**

**A. Building Permits**

The International Residential Code, International Building Code, International Fire Code and other construction codes in effect in the City, or amendments thereto, on the date of filing a complete building permit application in The Villages MPD shall apply to such application.

Provided, however, that any building permits necessitated by the terms of Exhibit “Q” are governed by Exhibit “Q” itself.

**B. Utility Permits**

All improvements within public right-of-way and/or public easements, and all improvements intended for ownership, operations or maintenance by the City shall be consistent with BDMC Chapter 15.08 (Exhibit “E”) and the Black Diamond Engineering Design and Construction Standards (Exhibit “E”); provided, however, that the street design standards for streets internal to the Project Site are set in this Agreement as required by Condition of Approval No. 148 and further provided, that any Utility Permits necessitated by the terms of Exhibit “Q” are governed by Exhibit “Q” itself.

**C. Clearing and Grading**

All clearing and grading activities shall be consistent with the clearing and grading standards of BDMC Chapter 15.28 (Exhibit “E”). The Designated Official shall be responsible for administration of clearing and grading permits.

**12.8.2 Lot Line Adjustments, Short Subdivisions, Subdivisions, Plat Alterations / Vacations**

All lot line adjustments, short subdivisions, subdivisions, and plat alterations/vacations shall be consistent with requirements of BDMC Title 17 (Exhibit “E”).

**12.8.3 MPD Site Plan Amendments**

MPD Site Plan amendments consistent with Subsection 4.4 of this Agreement shall be allowed upon the following findings by the Designated Official:

- A. Transportation, stormwater, water and sewer system improvements necessary to support the change are in place or will be provided at the time of occupancy; and
- B. The MPD Site Plan amendment will not result in the maximum number of residential units or combined commercial/Office/Retail square feet to be exceeded or the total area of required Open Space to be reduced unless a Major Amendment to the MPD Permit Approval is approved pursuant to BDMC 18.98.100 (Exhibit “E”).

**12.8.4 Site Plan Review**

Site plan review shall be conducted pursuant to BDMC 18.16 (Exhibit “E”), except the application and any amendments shall be reviewed as a Type 2 decision.

**12.8.5 Binding Site Plan**

Binding Site Plan applications shall be consistent with the requirements of BDMC Chapter 17.34 (Exhibit “E”).

**12.8.6 Home Occupation**

Home Occupations shall be consistent with the requirements of the BDMC Chapter 18.54 (Exhibit “E”).

**12.8.7 Administrative Conditional Use Permit**

Administrative Conditional Use Permits shall be consistent with the requirements of the BDMC Chapter 18.12 (Exhibit “E”).

**12.8.8 Accessory Dwelling Unit (ADU)**

ADUs shall be consistent with process and requirements of BDMC Chapter 18.56 (Exhibit “E”).

**12.8.9 RESERVED**

**12.8.10 Variance**

Variances shall be consistent with BDMC 18.12.030 (Exhibit “E”).

**12.8.11 Rezone**

Rezoning shall be consistent with BDMC 18.12.020 (Exhibit “E”).

**12.8.12 Comprehensive Plan Amendments**

Comprehensive Plan Amendments shall be consistent with BDMC Title 16 (Exhibit “E”).

**12.8.13 Work Hours**

BDMC 8.12.040.C (Exhibit “E”) establishes the following noise standards: “Sounds originating from construction sites, including but not limited to sounds from construction equipment,

power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt.”

Pursuant to Condition of Approval No. 43, Master Developer nonetheless agrees that it shall comply with the following, more restrictive noise standard: any sound made by the construction, excavation, repair, demolition, destruction, or alteration of any building or property or upon any building site anytime shall be prohibited on Sundays and City holidays and outside the hours of 7:00 am through 7:00 pm, Monday through Friday and 9:00 am through 5:00 pm on Saturday, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C (Exhibit “E”).

On a case by case basis, work may be permitted on Sundays if authorized by the Noise Review Committee; however, no work shall occur outside the hours of 9:00 am through 5:00 pm on Sundays.

**12.8.14 Amendments to MPD Permit Approval**

- A. Minor Amendments: Per BDMC 18.98.100(I) (Exhibit “E”), applications for Minor Amendments to the MPD Permit Approval (as defined in BDMC 18.98.100) shall be reviewed by the Designated Official as a Type 2 decision as described in BDMC 18.08 (Exhibit “E”).
- B. Major Amendments: Applications for Major Amendments shall be reviewed pursuant to BDMC 18.98.100 (Exhibit “E”).

**12.8.15 Consolidation of Major Amendments**

Pursuant to BDMC 18.08.130 (Exhibit “E”), if a proposal by the Master Developer requires a Major Amendment to both the MPD Permit Approval and this Agreement, the applications shall be processed concurrently unless the Designated Official determines that separate processing will result in a more efficient or effective review process.

## **12.9 BONDING FOR IMPROVEMENTS**

Financial surety for improvements required within Section 7 shall be subject to the Black Diamond Engineering Design and Construction Standards (Exhibit “E”) as referenced in Subsection 7.1.4. All other permits shall provide bonding surety or other financial guarantee as required by BDMC 17.20.050.B (Exhibit “E”) and the Black Diamond Engineering Design and Construction Standards Section 1.5 (Exhibit “E”). Provided, however, that any bonding or inspections for improvements constructed pursuant to Exhibit “Q” will be governed by the terms of Exhibit “Q”.

### **12.9.1 Bonding for Improvements**

The Master Developer may defer any required improvement so long as the completion of the work is guaranteed by a performance bond or other financial guarantee. The bond, or other financial guarantee, must be in a form acceptable to the City in an amount equal to one hundred fifty percent (150%) of the Designated Official’s estimated cost of the improvements, as determined by reference to the Black Diamond Engineering Design and Construction Standards Section 1.5 (Exhibit “E”). The actual construction and installation of such improvements shall be completed within a time frame to be set by the Designated Official consistent with this Section.

### **12.9.2 Inspection and Acceptance of Improvements**

The City shall exercise its best efforts to inspect improvements within one (1) business day of the inspection request. The inspector shall determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within seven (7) business days of the date of the inspection. The City shall make every effort to provide one comprehensive written list upon which all subsequent inspections shall be based. The improvements shall be presented to the City Council for final action accepting or rejecting the improvements after final inspection and determination of complete construction.

### **12.9.3 Release of Bond or Financial Guarantee**

Original bond or financial guarantee amounts will be fully released within fourteen (14) Days of acceptance of the improvements by the City Council.

## **12.10 MAPLE VALLEY TRANSPORTATION MITIGATION AGREEMENT**

### **12.10.1 Maple Valley Transportation Mitigation Agreement Effect**

On October 6, 2010, the City of Maple Valley and BD Village Partners, LP and BD Lawson Partners, LP entered into a negotiated agreement regarding traffic mitigation inside the City of Maple Valley (the “Maple Valley Transportation Mitigation Agreement”), a copy of which is included as Exhibit Q to this Agreement. Pursuant to MPD Permit Approval Condition No. 15, Ordinance 10-946, the Maple Valley Transportation Mitigation Agreement “supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement.” More specifically, Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the Villages MPD, Ordinance No. 10-946, are superseded by the Maple Valley Transportation Mitigation Agreement in regards to transportation improvements within the City of Maple Valley.

### **12.10.2 City of Black Diamond response in the Event of Maple Valley Litigation**

In the event that the City of Maple Valley provides notice to the City of Black Diamond that the City of Maple Valley has filed a lawsuit alleging breach of the Maple Valley Transportation Mitigation Agreement, and providing that the Maple Valley lawsuit seeks injunctive relief, the City of Black Diamond shall not issue any additional building permits for the MPD until that lawsuit is resolved, or BD Village Partners, LP and/or BD Lawson Partners, LP, and their respective successors and assigns, has paid, under protest, the disputed amount to the City of Maple Valley. If BD Village Partners, LP and/or BD Lawson Partners, LP, and their respective successors and assigns, provides notice to the City of Black Diamond that it has paid, under protest, the disputed amount to Maple Valley, it shall concurrently provide a copy of such notice to the City of Maple Valley.

### **12.10.3 Notation on Plats and Binding Site Plans**

The City of Black Diamond shall require that the Master Developer place a note on all preliminary plats, final plats, and binding site plans that references the obligations under the Maple Valley Transportation Mitigation Agreement by BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns.

**12.10.4 Third Party Beneficiary Status**

The City of Black Diamond and BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns agree that the City of Maple Valley is a third party beneficiary of those conditions or provisions, and only those conditions or provisions, of this Development Agreement that require BD Village Partners, LP and BD Lawson Partners, LP, and their respective successors and assigns to abide by the terms of the Maple Valley Transportation Mitigation Agreement. This subsection of this Agreement is intended as a specific exception to subsection 15.11 of the Development Agreement.

**12.10.5 Permit issuance numbers**

The Maple Valley Transportation Mitigation Agreement obligates BD Village Partners, LP and BD Lawson Partners, LP and their respective successors and assigns to submit to the City of Maple Valley a quarterly accounting showing the number of preliminary plat and final plat applications filed for the Property; the number of preliminary plat and final plat approvals issued for the Property, the number of building permits issued to date for dwelling units on the Property, the number of ADUs approved by building permit or otherwise (including a limit of the number of building permits issued for Accessory Dwelling Units to an aggregate total of 450 permits for the Villages and the Lawson Hills MPDs, together), and the number of preliminary plats, final plats, and building permits projected to be approved in the subsequent quarter. The Maple Valley Transportation Mitigation Agreement grants Maple Valley the right to require verification of this information from the City of Black Diamond. The City of Black Diamond agrees to cooperate in response to any such request for verified information.

**12.11 COVINGTON TRANSPORTATION MITIGATION AGREEMENT**

On December 14, 2010, the City of Covington and BD Village Partners, LP and BD Lawson Partners, LP entered into a negotiated agreement regarding traffic mitigation inside the City of Covington (the “Covington Transportation Mitigation Agreement”), a copy of which is included as Exhibit “R” to this Agreement. Pursuant to Condition of Approval No. 15 of the MPD Permit Approval, the Covington Transportation Mitigation Agreement “supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement.” More specifically, Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the MPD Permit Approval are superseded by the Covington

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Transportation Mitigation Agreement in regards to any potential transportation improvements within the City of Covington.

### **13.0 MISCELLANEOUS ADDITIONAL STANDARDS AND REQUIREMENTS**

#### **13.1 CONSTRUCTION WASTE MANAGEMENT PLAN**

Pursuant to Condition of Approval No. 8 of the MPD Permit Approval, the Master Developer shall comply with the Construction Waste Management Plan attached hereto as Exhibit "J".

#### **13.2 FOREST PRACTICES**

Pursuant to Conditions of Approval Nos. 87 and 121 of the MPD Permit Approval, clearing and tree removal will be necessary and may only be proposed after an application for an Implementing Project is proposed for a Development Parcel, or when grading is proposed on another Development Parcel in the vicinity of an Implementing Project to assure a balance of cut and fill for the proposed Implementing Project (as is required by Condition of Approval No. 110 in the MPD Permit Approval). All tree removal shall be done in accordance with BDMC 19.30 (Exhibit "E"). In some cases, tree removal necessitated by an Implementing Project or the need to balance cut and fill may have result in enough timber value to result in timber revenue, and in those cases a separate Forest Practices Act approval will be required. To the extent that a Development Parcel or portion thereof is logged for timber revenue, the time period for which the parcel may remain cleared and undeveloped shall be set by condition of the Implementing Project or of the Forest Practices Approval, whichever is more strict. Development Parcels being cleared or logged that are easily accessible to the public will be secured with fencing and signage.

#### **13.3 SCHOOLS**

Pursuant to Condition of Approval No. 98 of the MPD Permit Approval, school mitigation is accomplished through the Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727 ("School Agreement").

Amendments to the Comprehensive School Mitigation Agreement shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2; provided, such amendments are: (i) executed by the City, the Enumclaw School District, BD Lawson Partners, L.P., and the Master

Developer, and (ii) otherwise satisfies Condition of Approval No. 98 of the MPD Permit Approval.

### **13.4 FIRE MITIGATION**

The City commissioned the “Impact Fees for Fire Protection Facilities” study dated January 13, 2011 (Exhibit “T”) (the “Fire Impact Fee Study”), to establish the rates for impact fees for fire protection facilities in the City of Black Diamond. As of the date of this Agreement, the City has not yet adopted City-wide fire impact fees. Pursuant to Condition of Approval No. 100 of the MPD Permit Approval, impacts to fire services throughout the MPD shall be mitigated as follows:

- A. Mitigation Fees. Payment of fire mitigation fees at the rate described in Table 4 of the Fire Impact Fee Study (\$1,783.13 per Dwelling Unit, and \$2.29/square foot of non-residential construction) until the City adopts a City-wide fire impact fee program. Such mitigation fees shall be due at building permit issuance for each single-family and multi-family Dwelling Unit and commercial structures. Provided, however, the fire mitigation fees paid by the applicant must be expended by the City on the needed Additional Fire Protection Facilities outlined in the Fire Impact Fee Study. To confirm such expenditures, the City shall prepare an annual report of collections and expenditures and provide said report to the Master Developer during the Annual Review as defined in Exhibit “N”. Provided, further, the fire mitigation fees paid by the applicant must be expended or encumbered for such permissible use within nine years of the City’s receipt or thereafter returned to the applicant, unless a longer period of time is mutually agreed to by the City and Master Developer, or the City makes findings of extraordinary or compelling need to extend the nine-year period.
  
- B. Impact Fees. When the City adopts a City-wide fire impact fee program that complies with RCW Chapter 82.02, payment of fire impact fees shall be at the rate adopted by the City fire impact fee.
  
- C. Land for a Fire Station on the Project Site. The Master Developer may also provide land for the purpose of construction of a minimum 2-bay fire station (with the possibility of future expansion) and living quarters for an appropriate number of FTE fire fighters. The

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Master Developer shall elect whether to provide land by the time of issuance of a Certificate of Occupancy for the 1,500<sup>th</sup> Dwelling Unit, or such later date as is reasonably acceptable to the City. The location of the land will be in the vicinity of either Parcel C or Parcel D within the Project Site. The value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The value of the land shall be credited against any existing or future fire mitigation or impact fees. The credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.

- D. Satellite Fire Station. The Master Developer shall provide one (1) satellite fire station for the City pursuant to the terms, conditions, and provisions below:
- i. Design. The design of the satellite fire station described in this subsection D shall be selected, completed, and mutually agreed to by the City and Master Developer no later than the time of issuance of a Certificate of Occupancy for the 250<sup>th</sup> Dwelling Unit pursuant to the following conditions:
    - a. Pursuant to the Fire Impact Fee Study, the Master Developer's obligation is limited to a satellite fire station consisting of two bays and not exceeding 4,915 square feet.
  - ii. Site Selection. The site for the satellite fire station described in this subsection D shall be selected and mutually agreed to by the City and Master Developer no later than the time of issuance of a Certificate of Occupancy for the 250<sup>th</sup> Dwelling Unit pursuant to the following conditions:
    - a. The City currently owns the following two potential satellite fire station sites described as follows: (i) Parcel No. 1421069014, i.e., site adjacent to existing City shop site; and (ii) Parcel Nos. 1221069081 and 1221069082. The City and BD Lawson Partners, LP currently own the third following potential satellite fire station site described as follows: Parcels Nos. 1221069081, 1221069082, and 1321069036. The

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City and Master Developer acknowledge and agree that these three sites are the preferred location for the satellite fire station and that one such site shall be used for the satellite fire station subject to due diligence and the reasonable discretion of the City.

- b. If and only if the three sites described in subsection D(ii)(1) above are deemed infeasible at the reasonable discretion of the City and Master Developer, then the Master Developer shall provide and/or acquire a site for the satellite fire station as credit against existing or future fire mitigation or impact fees.
- iii. Construction. The Master Developer shall construct or cause to construct, the satellite fire station designed pursuant to subsection D(i) above on the site selected pursuant to subsection D(ii) above as credit against existing or future fire mitigation or impact fees. Master Developer shall cause the letting of a contract for construction of such fire station as follows:
  - a. If the construction of the satellite fire station is financed pursuant to a Community Facilities District (CFD) established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 500th Dwelling Unit; or
  - b. If the construction of the satellite fire station is not financed pursuant to a Community Facilities District established under RCW Ch. 36.145, the construction contract shall be awarded no later than the time of issuance of a Certificate of Occupancy for the 750th Dwelling Unit.
- iv. Equipment. The Master Developer shall provide the fire and/or emergency response apparatus reasonably necessary for operation of the satellite fire station described in this subsection D prior to such station commencing operation as credit against existing or future fire mitigation or impact fees subject to the following conditions:

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- a. Pursuant to the Fire Impact Fee Study, apparatus shall not exceed the following: an engine (\$726,856), aid car (\$251,420), staff vehicle (\$55,000), and brush truck (\$90,000).
- v. Funding. The design, site selection, construction, and equipment described in this subsection, shall be funded as follows:
  - a. City Funding Obligation. The City shall first provide, use, and/or apply any: (i) fire mitigation or impact fees it receives from the Master Developer or other third parties following the execution of this Agreement; and (ii) grant funds and/or REET revenues allocated to the provision of a fire station.
  - b. Master Developer Funding Obligation. Any deficit remaining after the application of the City's funds pursuant to the subsection above, shall be funded by the Master Developer which may include use of a Community Facilities District established under RCW Ch. 36.145.
  - c. Master Developer Credit. Costs incurred by the Master Developer (including cost of funds) for the design, site selection, construction, or equipping of the satellite fire station pursuant to this Subsection D shall be credited against any existing or future fire mitigation or impact fees of the Master Developer. If the Master Developer dedicates land for the satellite fire station site (including the purchase of a new site), the value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.
- E. Fire Station Construction and Related Equipment. In addition to the satellite fire station described in subsection D above, the Master Developer may elect to construct an additional fire station on the Project Site, at a date reasonably acceptable to the City, and/or purchase fire and emergency response equipment, vehicles, or apparatus as a credit against existing or future fire mitigation or impact fees. Any credit shall not

exceed the total value of a Villages and Lawson Hills MPD-wide fire mitigation or impact fee collected at the rates described above.

F. Credit Assignment.

- i. The Master Developer may elect at its sole discretion to transfer or assign any credit it receives pursuant to this Section 13.4 to BD Lawson Partners, LP, or its successors and assigns. The Master Developer and City agree that BD Lawson Partners, LP, or its successors and assigns, may use such credit against existing or future fire mitigation or impact fees for the Lawson Hills Master Planned Development approved pursuant to City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.
  - ii. The City agrees that the Master Developer, or its successors and assigns, may use any fire mitigation or impact fee credit it receives from BD Lawson Partners, LP, or its successors and assigns, against existing or future fire mitigation or impact fees for The Villages MPD.
- G. The City acknowledges and agrees that the fire mitigation contained in this Section 13.4 “ensures protection concurrent with project build out” (per Condition of Approval No. 100 of the MPD Permit Approval) and is consistent with the Black Diamond Comprehensive Plan.

### **13.5 MINE HAZARD RELEASE**

All houses sold in classified or declassified coal mine hazard areas require a liability release from the homeowner to the City consistent with BDMC 17.20.040.H (Exhibit “E”) and pursuant to Condition of Approval No. 116 of the MPD Permit Approval. A copy of the release form is included in Exhibit “M”.

### **13.6 FISCAL IMPACTS ANALYSIS**

The terms and process for performing the fiscal analysis and evaluating fiscal impacts outlined in the MPD and this Agreement are as follows:

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Concurrent with submittal of the first Implementing Project within a Phase, the Master Developer shall submit for review and approval a fiscal analysis for the entire Phase. The fiscal analysis shall be based on the following methodologies and assumptions.

1. The following sections provide parameters for the fiscal analysis.
  - a. Expenses and revenues for the following general fund departments will be included in the fiscal analysis:
    - i. Legislative
    - ii. Executive
    - iii. Administration
    - iv. City Clerk
    - v. Finance
    - vi. Information Services
    - vii. Facilities
    - viii. Legal
    - ix. Municipal Court
    - x. Police
    - xi. Fire
    - xii. EMS Supplies
    - xiii. Animal Control
    - xiv. Community Development
    - xv. Natural Resources
    - xvi. Economic Development
    - xvii. Parks & Recreation
    - xviii. Cemetery
    - xix. Central Services & Employee Recognition
  - b. Expenses and revenues for the following special revenue and utility funds will be included in the fiscal analysis:
    - i. Street Fund
    - ii. Real Estate Excise Tax I & II

- iii. Criminal Justice Fund
- iv. Stormwater Department
- c. Expenses and revenues for the funds listed in subsections 1(a) and 1(b) to be included in the fiscal analysis can be organized and presented to correspond to the funds identified in the City's budget, but this format is not required, and the preparer of the fiscal analysis may use a different format.
- d. The following will be excluded from the fiscal analysis:
  - i. Internal Service Funds – interfund transfers that are assumed to have no net impact on total revenues and total expenses
  - ii. Cable television – franchised activity assumed to be funded by user fees
  - iii. Electric power – provided by regulated public utility assumed to be funded by user fees
  - iv. Natural gas – provided by regulated public utility assumed to be funded by user fees
  - v. Schools – separate governmental entity
  - vi. Solid waste – franchised activity assumed to be funded by user fees
  - vii. Water (operations, capital and debt service) – enterprise activity assumed to be funded by user fees
  - viii. Wastewater (operations, capital and debt service) – enterprise activity assumed to be funded by user fees
- e. Expenses and revenues for the funds listed above in subsections 1(a) and 1(b) will be included in the fiscal analysis using one or more of the following methods to be selected by the preparer of the fiscal analysis as reasonably agreed to by the Designated Official and Master Developer:
  - i. A separate analysis for each fund (case study), or
  - ii. Apply a per capita rate to the funds, or
  - iii. Apply an indirect cost rate to the funds. The indirect cost rate shall be reasonably acceptable to the Designated Official and Master Developer, or

- iv. Level of service methodology, or
- v. Comparable city methodology. For the purpose of this fiscal impact analysis “comparable cities” are, in part or in whole, one or more cities in the State of Washington that are comparable to Black Diamond’s characteristics when the development in the Phase is completed. For example, if the specific development phase being analyzed will increase Black Diamond’s population to 8,000, the comparable cities used in the fiscal analysis should have populations in a reasonable range from moderately less than 8,000 to moderately more than 8,000. Population is not the only determinant of comparability. Different comparable cities may be used for different departments or functions in order to provide the greatest comparability to Black Diamond’s characteristics when the development in the Phase is completed. The selection of alternative cities is subject to reasonable agreement by the Designated Official and Master Developer.
- Selection of comparable cities to be used in the fiscal analysis shall identify the factors used to identify and determine comparability, including such factors as population, employment, levels of service, services provided by city or by contract, etc.
  - The comparable cities to be used in the fiscal analysis shall be reasonably acceptable to the Designated Official and Master Developer.

As of the date of this Agreement, the parties agree that the comparable city/case study method shall be used for police, fire, public works and parks and recreation departments and the per capita method shall be used for the remaining general fund departments. The parties agree that the case study method shall be used for the remaining special funds. Once a methodology is selected, subsequent analyses should follow the same methodology unless otherwise reasonably agreed to by the Designated Official and Master Developer.

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- f. The analysis shall present revenue, expenses and net position (surplus or deficit) for each year of construction and carry two years beyond build-out of the Phase being analyzed.
  - g. Year-end surplus or deficit of each fund shall be reported for each year. Annual surpluses or deficits shall not be carried forward as fund balances. A separate calculation of cumulative surplus or deficit shall be calculated for the end of each year.
  - h. The completed fiscal impact analysis to be delivered to the City shall include the study or report, and a copy of the spreadsheets used to calculate the revenue, expenses, and net position. The study and/or spreadsheets shall identify the source(s) or example(s) for data and clearly identify assumptions for which no data sources or examples are provided.
  - i. Revenues and expenses for general fund departments that are determined to be one time in nature will not be included in the fiscal analysis. These may include the costs of planning, inspection and permit activities along with planning, inspection, permitting and development impact fees. Provided, however, if the building division is removed from the MDRT pursuant to the terms of the Funding Agreement, only then would the revenues and expenses of the building division be included in the fiscal analysis.
2. Operating revenues will be calculated for the following sources using the methods described for each source of revenue.
- a. Property tax revenue will be calculated based on the estimated taxable value of development multiplied by the levy rate for each applicable property tax paid to the City, including any levy lid lifts that have been authorized.
  - b. Sales tax revenue will be calculated for (i) sales by businesses in the new development, (ii) sales to residents and businesses in the City from businesses outside the City, (iii) sales to new development by existing businesses in the City, and (iv) sales of construction materials for new construction:

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- i. Sales taxes from businesses in the City will be calculated based on typical retail sales per square foot or per employee from the type(s) of businesses expected in the new development. A separate tax rate shall be used for restaurants and taverns. Since Black Diamond has too little commercial property to serve as an accurate predictor of future taxable sales, the sales taxes per square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed.
  - ii. Sales taxes from sales to residents and businesses in the City from businesses outside the City ("streamlined sales tax") will be calculated based on typical sales taxes per capita (or household) and per employee or square foot in the new development from sales from businesses outside the City. Since Washington's experience with this revenue is relatively new, sales taxes per capita, per household, and per business can be from state or regional averages, or from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed. The analysis of streamlined sales tax revenue should exclude sales taxes from new construction of the new development which will be presented separately, as described below.
  - iii. Sales taxes from sales to new residents in the City from existing businesses in the City will be calculated based on the lesser of (i) typical sales taxes per capita and per employee of new development from sales from existing businesses in the City or (ii) the percentage of household income spent on retail goods captured by the existing businesses in the City.
  - iv. Sales taxes from new construction will be calculated based on value of taxable materials for construction of the new development.
- c. Utility tax revenue will be calculated for (i) utility taxes from residential property and (ii) utility taxes from commercial property:

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- i. Utility taxes from residential property will be calculated based on typical utility tax revenue per dwelling or per capita from residential units in the new development.
  - ii. Utility taxes from commercial property will be calculated based on typical utility tax revenue per square foot or per employee from the type(s) of businesses expected in the new development. Since Black Diamond has too little commercial property to serve as an accurate predictor of future utility usage, the utility taxes square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed.
- d. Cable franchise revenue will be calculated based on per-person (Per Capita).
- e. Business license revenue will be calculated based on the number of business establishments in the new development.
- f. Intergovernmental revenue will be calculated for (i) entitlements and other formulaic revenue, and (ii) grants and other non-formulaic revenue.
  - i. Entitlements and other formulaic revenue will be calculated based on the basis used for distribution of each entitlement and other formulaic source of revenue or on per-person (Per Capita).
  - ii. Grants and other non-formulaic revenue will be calculated based on per-person (Per Capita).
- g. Charges for service revenue, excluding Central Service allocation, will be calculated based on per-person (Per Capita).
- h. Central Service allocation will be calculated based on the City's current method of allocating central service costs. Any central service allocation that is for an internal service fund shall be excluded (to be consistent with the parameters listed in Section 1, above).
- i. Municipal court revenue will be calculated based on per-person (Per Capita).

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- j. Stormwater utility revenue will be calculated based on Equivalent Residential Units (ERUs) from new development in a manner comparable to the City's existing system of ERUs for stormwater.
  - k. Other revenue will be calculated based on per-person (Per Capita). Other revenue includes B & O Tax, Pull Tabs and Punch Board Tax, Gun Permits & Fingerprinting, Interest, Surplus Equipment and Other Miscellaneous.
3. Operating expenses will be calculated using one of the methods in subsection 1(e).
- a. Efficiency factors or level of service adjustments may be applied to general fund departments and special revenue funds as reasonably agreed to by the Designated Official and Master Developer.
  - b. Calculate a reserve for operating funds equal to the current, calculated as a percent of the fund, reserve as reflected in the City budget used for the fiscal analysis.
4. Assumptions to be used in the fiscal analysis shall include the following.
- a. All revenues and expenses shall be in current dollars. No inflation adjustment will be made to any revenues or expenses unless otherwise agreed to by the Designated Official and Master Developer.
  - b. No revenues or expenses shall be calculated for "multiplier" impacts of indirect increases in economic activity.
  - c. The value for residential units shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected sale or rental value of the proposed units.
  - d. The values for non-residential development shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected market value of the proposed nonresidential development.

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- e. The retail sales tax per square foot assumed for retail development will be consistent with the amount of taxable sales typically required to justify retail tenants occupying such properties.
  - f. Persons per household (pph) for the City and any comparable cities shall be as indicated by the most recent U.S. Census unless more recent data is available that is reliable and the source is clearly identified.
  - g. Square feet per employee shall be documented from sources reasonably acceptable to the City.
  - h. Affordable units are provided through the diverse mix of product types for the Implementing Projects, subject to the review and other requirements set forth in the Condition of Approval Nos. 138 and 139, and Agreement section 11.8.
  - i. If another Implementing Project for another Phase is submitted prior to completion of a previous Phase, the new fiscal analysis shall take into consideration the incomplete portion of the previous Phase and re-analyze that portion. Adjustments to the previous Phase may be necessary, and shall be considered on a case by case basis.
5. Fiscal analysis results:
- a. If the results of the fiscal analysis show a revenue deficit after application of a credit equal to the Developer's Total Funding Obligation pursuant to the terms of the Funding Agreement, then the Master Developer shall prepare a supplemental analysis proposing how any projected City fiscal shortfall should be addressed. Possible options for addressing the shortfall may include, but are not limited to:
    - i. The Master Developer may request to privatize certain facilities within the project. The decision to accept any such request remains within the sole, reasonable discretion of the City. The facilities may include:
      - Retaining the right-of-way landscape maintenance obligation with the Master Developer or a Homeowners' Association;

- Not dedicating some Parks to the City or by dedicating the Parks, but retaining Park maintenance obligations with the Master Developer or a Homeowners' Association; or
  - Not dedicating some private streets and/or cul-de-sacs serving less than 50 homes to the City or by dedicating the streets but retaining street maintenance obligations with the Master Developer or a Homeowners' Association.
- ii. Pursuant to Condition of Approval No. 156, interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues. However, if a deficit is projected as part of the fiscal analysis for Phase 3, then a payment shall not be accepted by the City.
6. Annual review of Fiscal Results
- a. As part of the Annual Review pursuant to the terms of the Funding Agreement, the Designated Official and Master Developer shall meet to review the projections of the Fiscal Analysis compared to the City's budget.
- i. If interim funding is provided pursuant to subsection 5.a.ii above, then the Annual Review shall include development of a payment schedule. The payment schedule shall be determined by comparing the projected revenues and expenses shown in the fiscal analysis to the City's projected budget for the upcoming calendar year.

In addition, the Black Diamond Staff and Facilities Funding Agreement is replaced for The Villages MPD with The MPD Funding Agreement included in Exhibit "N".

### **13.7 NOISE ATTENUATION**

Pursuant to Condition of Approval No. 44 of the MPD Permit Approval, to provide construction noise attenuation for existing residents adjoining The Villages MPD, the following shall apply to Villages Development Parcels V1, V2, V10, V13, V15, V20, V49, V57, V60, and V71. For each of the designated Development Parcels, the Master Developer, or its Transferee, shall:

- i. Offer to meet with the affected existing resident(s) to seek a mutual agreement about mitigation to be provided, or if mutual agreement cannot be reached, then;
- ii. The Master Developer shall have the choice to provide either:
  - 1. Mitigation consisting of a buffer, trail easement or other separator between the edge of the development parcel and the property boundary that is 100-foot wide, provided that trails, recreational facilities, stormwater facilities and similar uses otherwise permitted for the MPD are allowed inside the 100-foot area; or
  - 2. Mitigation consisting of all of the following:
    - a. A construction noise attenuation barrier (i.e. berm, wall, or combination of the two) on the development parcel, provided that if a buffer or trail easement less than 100 feet adjoins the development parcel, the barrier may be placed within that area,
    - b. Design, sizing, and placement of the noise attenuation barrier in a manner intended to reduce noise from long term construction activities (i.e. activities lasting 6 months or longer, such as construction hauling and including loading/unloading of dump trucks),
    - c. Payment by the Master Developer to the City for its costs in commissioning and obtaining a study to evaluate the noise barrier design and placement,
    - d. The noise study shall evaluate whether noise from long-term construction activities will comply with the environmental noise limits in WAC 173-060-040, and if the noise study concludes that an on-site noise barrier cannot effectively control long-term construction noise to the degree that it complies with WAC noise limits outside the adjoining existing homes, additional mitigation measures intended to reduce interior sound levels will be evaluated,
    - e. Any additional noise mitigation measures determined to be effective at reducing interior sound levels (i.e. providing a reduction of exterior-to-interior noise transmission at least 7 dBA more than provided by the existing building envelope) shall be implemented so long as the adjoining owner provides permission if the mitigation requires work on their property, and
    - f. At the applicant's discretion, the noise barrier may be temporary (i.e. removed after construction on one of the designated parcels is complete) or permanent.

Mitigation under subsection ii(2) above shall be installed before construction activities begin on the designated Development Parcel. In the event that lands adjacent to any of the designated Development Parcels are acquired by the Master Developer of this MPD, this condition shall not apply as to the acquired lands.

### **13.8 GREEN VALLEY ROAD**

Pursuant to Condition of Approval No. 33(a) of the MPD Permit Approval, an expert study entitled “SE Green Valley Road – Traffic Calming Strategies” dated November 29, 2010, examined opportunities to limit MPD traffic using SE Green Valley Road, including an assessment of potential traffic calming devices that could be used within the existing improved right-of-way. Exhibit P includes the measures identified in that study, and describes the process and timing required for the Master Developer to seek permits from King County should King County allow installation of the improvements, including the proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review Committee established per Condition of Approval No. 33(b) of the MPD Permit Approval.

### **13.9 GENERAL GOVERNMENT FACILITIES MITIGATION**

- A. The City shall commission a study regarding general governmental facilities based, at a minimum, on the Black Diamond Comprehensive Plan that are necessary for the City to conduct its municipal business (“General Government Facilities Plan”) in order to establish mitigation fee rates for such improvements. The General Government Facilities Plan shall be commissioned by the City following execution of this Agreement and shall be completed within twelve (12) months of commissioning the study. The scope of the General Government Facilities Plan shall be limited to the following improvements/facilities: City Hall, Municipal Court, Public Works (corporate yard including vehicle storage, material storage, and vehicle maintenance), Police Station, and associated equipment for each listed improvement/facility. The study shall be funded through the MPD Funding Agreement (Exhibit “N”).
  
- B. Impacts to general government facilities services resulting from the MPD shall be mitigated as follows:

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- i. Payment of general government facilities mitigation fees at the following rate: \$1,750 per Single Family Dwelling Unit; \$900 per Multi-family Dwelling Unit; and \$1.50/square foot of non-residential construction until the City adopts a City-wide general government facilities mitigation fee schedule. Such mitigation fees shall be due at time of building permit issuance for each single-family and multi-family Dwelling Unit. Mitigation fees for non-residential construction shall be due at Binding Site Plan or at building permit, whichever occurs first, and shall be determined based on Floor Area. Provided, however, the general government facilities mitigation fees paid by the applicant must be expended by the City on the needed facilities outlined in the General Government Facilities Plan. To confirm such expenditures, the City shall prepare an annual report of collections and expenditures and provide said report to the Master Developer during the Annual Review as defined in Exhibit "N". Provided, further, the general government facilities mitigation fees paid by the applicant must be expended or encumbered for such permissible use within nine years of the City's receipt or thereafter returned to the applicant.
  - ii. When the City adopts a City-wide general government mitigation fee schedule pursuant to the General Government Facilities Plan, future payment of general government mitigation fees shall be at the rate adopted by the City general government mitigation schedule.
  - iii. If the City has not adopted a City-wide general government facilities mitigation fee within three (3) years from the execution of this Agreement pursuant to subsection (ii) above, then the Master Developer's obligation to pay the mitigation fees set forth in subsection (i) above shall be void and of no further effect.
- C. The Master Developer may also provide land for the purpose of construction of any the facilities listed in the General Government Facilities Plan. The value of the land shall be established at the time of dedication and shall be appraised, by an MAI certified appraiser, at the fair market value of the underlying zoning and land use. The value of the land shall be credited against any existing or future general government mitigation fees. The credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide general government mitigation fee collected at the rates described above.
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- D. The Master Developer may elect to construct, by a date reasonably acceptable to the City, or contribute to the construction of any facility listed in the General Government Facilities Plan as credit against existing or future general government mitigation fees. Any credit shall not exceed the total value of a Villages and Lawson Hills MPD-wide general government mitigation fee collected at the rates described above.
  
- E. The Master Developer may elect at its sole discretion to transfer or assign any credit it receives pursuant to subsections C and D above to BD Lawson Partners, LP, or its successors and assigns. The Master Developer and City agree that BD Lawson Partners, LP, or its successors and assigns, may use such credit against existing or future general government mitigation fees for the Lawson Hills Master Planned Development approved pursuant to City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.
  
- F. The City agrees that the Master Developer, or its successors and assigns, may use any general government mitigation or impact fee credit it receives from BD Lawson Partners, LP, against existing or future general government mitigation fees for The Villages MPD.



## 14.0 DEFINITIONS

- **Accessory Dwelling Unit (ADU)** – See BDMC 18.56.010(A)-(B) (Exhibit “E”).
- **Agreement** – The Villages Master Planned Development Development Agreement between City of Black Diamond, Washington and BD Village Partners, LP dated \_\_\_\_\_ and any amendments thereto.
- **Baseball Diamond, Adult** – A baseball field with infield, grass outfield, backstop, wing fences and dugouts sufficient to meet fast pitch college/high school requirements. Does not include outfield fences or artificial turf.
- **Baseball field, Youth/Adult Softball** – A baseball field with infield, grass outfield, backstop, wing fences and dugouts sufficient to meet official Pony League requirements. Does not include outfield fences or artificial turf.
- **Basketball Court** – A full size court with a paved surface and two hoops, as accepted by the Designated Official. A half-sized court with paved surface and single hoop shall be counted as one-half (0.5) of a Basketball Court.
- **Black Diamond Engineering Design and Construction Standards** – The 2009 Black Diamond Engineering Design and Construction Standards as set forth in Exhibit “E” and incorporated herein by this reference as if fully set forth herein.
- **Black Diamond Municipal Code (BDMC)** – The Black Diamond Municipal Code as set forth in Exhibit “E” and incorporated herein by this reference as if fully set forth herein.
- **Build-Out Period** – A “Build-Out” Period of fifteen (15) years execution of this Agreement is established for all the Development and construction of uses in The Villages MPD. The Build-Out Period may be extended up to an additional five years for any Phase of the MPD pursuant to BDMC 18.98.195.E (Exhibit “E”).
- **Commercial or Commercial Development** – A development project consisting of office, retail, restaurant or personal services.
- **Community Facilities District** – As provided in RCW Chapter 36.145, a district designed to provide financing for community facilities and local, subregional, and regional infrastructure.
- **Comprehensive Plan, Black Diamond** – The City of Black Diamond Comprehensive Plan dated June 2009 adopted by Black Diamond Ordinance No. 09-908.
- **Constructed** – Bonded for or substantially completed.

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- **Construction Permits** – Building, Utility Permits (utilities and streets), clearing, grading, sign and landscaping approvals or similar administrative approvals and any modifications thereto.
- **Cottage** – A residential Dwelling Unit that is typically separate from its garage, and sometimes is not adjacent to vehicular access.
- **Covington Transportation Mitigation Agreement** - That certain agreement (titled “Settlement Agreement”) entered into the 14<sup>th</sup> Day of December, 2010 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Covington. A copy is included as Exhibit “R”.
- **Day** – Calendar day unless business day is specified.
- **Density** – Number of dwelling units proposed on a parcel or within a development project divided by its gross site area.
- **Design Guidelines, Design Review Committee (DRC)** – The design guidelines adopted and enforced by The Villages Homeowners’ Association or subset thereof.
- **Design Review Committee (DRC)** – The committee established pursuant to Section 12.3.
- **Design Standards and Guidelines, MPD Framework** – The design standards for Master Planned Developments contained within the City’s Design Standards and Guidelines adopted by reference in BDMC Chapter 18.74 dated June 18, 2009 set forth in Exhibit “E”.
- **Design Standards and Guidelines, MPD Project Specific** – The design standards attached to this Agreement as Exhibit “H”.
- **Designated Official** – The person, appointed by the City of Black Diamond Mayor, empowered, authorized, and charged with the duty to administer, interpret, process and approve plans as required by this Agreement and the BDMC.
- **Development** – All structures and other modifications of the natural landscape above and below ground or water, on a particular site.
- **Development Parcel** – A parcel shown generally as an individual parcel on the MPD Site Plan, Exhibit “A”.
- **Dwelling Unit** – A building or portion thereof designed exclusively for residential purposes providing complete housekeeping services for one family, built on-site or with factory built components and meeting DRC Design Guidelines.
- **Ecology** – Washington State Department of Ecology.
- **EIS** – The Villages Final Environmental Impact Statement (“EIS”) dated December 2009.

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- **Expansion Parcels** – Parcels adjacent to The Villages MPD identified on Exhibit “S” that may be added to and developed as part of the MPD during the Build-Out Period pursuant to the process outlined in Section 10.5 of this Agreement.
- **Floor Area** See BDMC 18.100.310 (Exhibit “E”).
- **Floor Area Ratio (FAR)**– The Floor Area (excluding Basements) of all buildings on a lot divided by the area of that lot (including lot areas subject to easement(s)); provided that, for Cottages, Single Family Attached and Multi-Family Buildings, FAR shall be calculated based upon the combined total Floor Area of all Dwelling Units in a building(s) divided by the combined total area of the building(s) development.
- **Football field, youth** – A 370’ by 170’ level grass field with goal posts at both ends.
- **Funding Agreement** - That certain agreement (titled “MPD Funding Agreement”) entered into the \_\_\_\_ day of \_\_\_\_\_, 2011 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Black Diamond. A copy is included as Exhibit “N”.
- **Green, common** – Semi-public, pedestrian-oriented passageways. They are intended for the use of the residents of the homes that face directly onto them and act as a collective front yard for them. They also serve as connectors between streets and serve as local pathways through the neighborhood. Common greens open onto neighborhood streets or directly onto residential boulevards.
- **Green Valley Road Review Committee** – The committee described in Condition of Approval No. 33(b) of Exhibit C to Ordinance No. 10-946 (attached hereto as Exhibit “C”).
- **Guidetti Parcel** – That parcel labeled “Guidetti Parcel” on Exhibit “B”.
- **Implementing Approval** – An Implementing Project approval granted by the City subsequent to the execution of this Agreement.
- **Implementing Project** – A development project subsequent to the execution of this Agreement, which implements or is otherwise consistent with this Agreement and the MPD Permit Approval, including but not limited to Construction Permits and Land Use Permits.
- **Institutional Use** – A quasi-public use or service including, but are not limited to, church, daycare, community center, clubhouse, schools (primary, secondary, high school, technical, university, business), cultural facilities (museum, performing arts center), YMCA, Boys’ and Girls’ Club, and libraries.
- **Kiosk** – A small structure, less than 200 gross square feet, often open on one or more sides, used as a newsstand or booth for selling tickets, espresso, candy, ice cream or other

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sundries. Kiosks also include notice boards, community bulletin boards and similar structures upon which advertisements are posted.

- **Land Use Application** – The various applications listed in Table 18-1 of BDMC 18.08.125 (Exhibit “E”).
- **Land Use Permit** – A Land Use Application approved by the City.
- **Lawson Hills MPD** – The master planned development entitled “Lawson Hills” approved by City of Black Diamond Ordinance No. 10-947 dated September 20, 2010.
- **Lawson North Triangle Property** – The property that lies west of SR-169, consisting of portions of Section 2 and 3, all in the city limits of Black Diamond.
- **Light Industrial** – Uses that include but are not limited to technology, biotechnology and medical equipment, light manufacturing, wholesaling, mini-storage, distillery, brewery, and winery.
- **Live/Work Unit** – A unit located within the Mixed Use land use category on the MPD Site Plan that is used for both a residence and a small business. For purposes of Dwelling Unit counts, Live/Work Units are considered Multi-Family Units. Per page 3-18 of Chapter 3 of the MPD Permit Application (Exhibit “L”), Live/Work Units are considered home occupations subject to BDMC Ch. 18.54 (Exhibit “E”).
- **Lot, Flag** – A lot with a narrow lot frontage that serves as private road or driveway access to a serving roadway, with the buildable area located to the rear of the lot.
- **Low Impact Development** – A planning and engineering approach to site and stormwater design that emphasizes conservation and the use of on-site natural features to protect water quality.
- **Main Property** – The contiguous property that lies west and south of Lake Sawyer Rd SE and Auburn Black Diamond Rd, north of Green Valley Rd, and west of SR 169, all in the city limits of Black Diamond.
- **Main Street** – Street labeled as “Main Street” on Figure 6.3 of this Agreement.
- **Maple Valley Transportation Mitigation Agreement** - That certain agreement (titled “Mitigation Agreement”) entered into the 6<sup>th</sup> Day of October, 2010 by and between BD Village Partners, LP, BD Lawson Partners, LP, and the City of Maple Valley and recorded on the 22<sup>nd</sup> day of April, 2011, in the records of King County, Washington at AFN 20110422000249. A copy is included as Exhibit “Q”.
- **Master Developer** – BD Village Partners, LP, so long as BD Village Partners, LP, owns the majority of any then-undeveloped Development Parcel in The Villages MPD, or any

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Master Developer Transferee. Upon a transfer from BD Village Partners to a Master Developer Transferee, all references in this Agreement to BD Village Partners shall be deemed to be references to such Master Developer Transferee, or its successors as the Master Development transferee.

- **Master Developer Transferee** – A person or entity other than BD Village Partners, LP, acquiring an interest or estate (except for security purposes only) in the majority of The Villages Property or The Villages Expansion Parcels then owned by the BD Village Partners, LP, including the then-undeveloped portion thereof, and including transfer of all interests through foreclosure (judicial or non-judicial) or by deed in lieu of foreclosure. “Master Developer Transferee” also means any successive person or entity similarly acquiring such an interest or estate from a previous Master Developer Transferee.
- **Mixed Use** – An area of pedestrian oriented development primarily intended for retail, restaurant, other commercial uses and residential uses.
- **Model Home** – Display home or apartment and related real estate sales and display offices/activities.
- **MPD Permit** – The City of Black Diamond’s adopted process for review and approval of an application for a Master Planned Development Permit outlined in the City’s MPD development regulations codified at BDMC Chapter 18.98 (Exhibit “E”).
- **MPD Permit Application**– The Villages Master Planned Development Application dated May 11, 2009, and revised on December 31, 2009.
- **MPD Permit Approval** – City of Black Diamond Ordinance No. 10-946 dated September 20, 2010 attached hereto as Exhibit “C”.
- **MPD Ordinance** – Chapter 18.98 of the Black Diamond Municipal Code (Exhibit “E”).
- **MPD Site Plan** – The site plan attached to this Agreement as Exhibit “A”.
- **MPD-H** – A density range primarily for Multi-family Dwelling Units; however, limited amounts of Single Family attached and detached Dwelling Units may also occur.
- **MPD-L** – A density range primarily intended for Single Family detached residential Development with a limited amount of Single Family attached residential.
- **MPD-M** – A density range that is intended to include a wide variety of Dwelling Unit types, including Single Family attached and detached and smaller Multi-Family buildings.
- **Multi-family Studio** – A Dwelling Unit within a multi-family structure with no separate bedroom space.
- **Multi-Family** – Any residential structure that contains 5 or more Dwelling Units.

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- **Neighborhood Commercial** – Corner store-style neighborhood commercial uses within residential designated areas that are intended to enhance residents’ access to goods and services needed daily in a setting that contributes to neighborhood character, encourages pedestrian activity, reduces automobile use, and serves as a focus of neighborhood life as described in Section 4.7.3 of this Agreement.
- **Noise Review Committee** – The committee described in Condition of Approval No. 45 of the MPD Permit Approval (attached hereto as Exhibit “C”).
- **Office** – Office uses include, but are not limited to: general office, medical offices, research and development, and business support services.
- **Open Space** – Open Space means all areas shown as sensitive areas, Open Space, Trails or Parks on the MPD Site Plan, Exhibit “A”, and any land subsequently designated as Park, Open Space, or aesthetic stormwater pond through an Implementing Approval.
- **Park** – A piece of land, whether publicly or privately owned, intended for passive or active recreation, gathering space or Open Space. Parks may include a wide range of uses and designs, including but not limited to: plazas, playfields, playgrounds, trails, gardens, pea patches, natural areas, interpretive centers, camping, picnic areas, restrooms, utilities and Open Space.
- **Park, Community** – 1 acre or greater in size and are recreational destinations that serve community-wide needs. They contain larger active recreational uses such as basketball, volleyball, tennis, playgrounds and informal play fields and are used by all residents of the community.
- **Park, Neighborhood** – 0.5- 1 acres in size and differ from community parks in that they serve the smaller recreational and social needs of a neighborhood. Smaller in scale and amenities, they are a collection of residential-scale green spaces that accommodate a range of neighborhood activities such as small playgrounds, sitting and picnic areas including barbecues, and court sports such as basketball.
- **Park, Passive Use** – An area or parcel of Open Space land either developed or undeveloped that is intended for non-organized Recreational Uses.
- **Park, Pocket** – One-half acre (0.5) or less in size and serve the informal needs of the immediately adjacent residents. They provide very small intimate gathering places and include tot-lots, seating areas or simply small gathering places for children to play. Pocket parks are located and sized to fit the unique characteristics of the neighborhood design.
- **Phase or Phases** – The MPD is planned in four Phases: Phase 1A, Phase 1B, Phase 2, and Phase 3. The land area for each Phase, together with infrastructure plans for each Phase, is shown in Exhibit “K”.

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- **Phasing Plan, MPD** – Chapter 9 of the MPD Permit Application and attached hereto as Exhibit “K”.
- **Plaza, Village Center** – The plaza serves as the focal point of the Village Center and accommodates passive uses by shoppers and their children. It is a flexible space that is comfortable for intimate conversations or people-watching but can also accommodate larger gatherings of the entire community such as art festivals, sidewalk sales, and other community celebrations.
- **Project-Level Facility** – A street or utility facility that is necessary to serve only those land uses located within the Project Site, regardless of the location of the street or utility facility. If Project-Level Facilities for several Development Parcels are combined or shared, they are still considered Project-Level Facilities.
- **Project Site** – The entire area contained within The Villages MPD boundaries as described and visually depicted in Exhibit “B”.
- **Public Use** – A land use or service operated by a public entity. These include, but are not limited to: schools, government offices, fire and police stations, water and sewer district offices, public works storage yards, teen clubs, senior centers, community centers and recreation centers, transit centers and park and ride lots.
- **Recreational Use** – Recreational Uses include, but are not limited to: Parks, clubhouse, open space, trails, golf courses, athletic, sports, and play fields, swimming pools, campgrounds, and other indoor and outdoor recreation facilities.
- **Regional Facility** – An on- or off-site street or utility facility that serves land uses located within and outside the Project Site, regardless of the location of the street or utility facility.
- **Retail** – Uses that provide services or sale of goods or merchandise to the public.
- **School** – Institution of learning offering instruction in the several branches of learning and study required by the Education Code of the State of Washington in grades kindergarten through twelve, including associated meeting rooms, auditoriums and athletic facilities.
- **School Agreement** – Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727.
- **Sensitive Areas Ordinance** – Black Diamond Municipal Code Chapter 19.10 as set forth in Exhibit “E” and incorporated herein by this reference as if fully set forth herein.
- **Setback** – A space, measured from the property line in, unoccupied by structures except where encroachments are specifically allowed by this Agreement.

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- **Single Family** – Any residential building that contains four (4) or fewer residences.
- **Site Area** – Area of land (expressed in gross square feet or gross acres) contained within the boundary lines of an Implementing Project.
- **Site Plan Review** – Site plan review is an evaluation of development plans to identify compliance with applicable regulations, requirements and standards and to ensure that development will protect the health, safety and general welfare of residents of the City.
- **Soccer Field** – A 190' X 300' level, natural grass practice field.
- **Soccer Field, Micro** – A level natural grass field with a minimum dimension of 60' X 120' feet that may be combined with other informal space.
- **Street Standards** – The City of Black Diamond's street standards as set forth in Chapter 3 entitled "Transportation" of the Black Diamond Engineering Design and Construction Standards (Exhibit "E").
- **TDR Ordinance** – BDMC Chapter 19.24 adopted by Black Diamond Ordinance No. 895 dated 4/2/2009.
- **Temporary Use** – Uses of a non-permanent nature including but not limited to: outdoor art and craft shows and exhibits, retail sales of Christmas trees, agricultural or horticultural products, firewood, seafood, and other items typically marketed seasonally; mobile services such as veterinary services; group retail sales such as swap meets, flea markets, parking lot sales, farmers' markets, auctions etc; circuses, carnivals, fairs, or similar transient amusement or recreational activities; sales offices; construction offices; contractor staging areas and other similar activities.
- **Tennis Court** – A single court tennis facility is 60' X 120', a double court is 108' X 120' and four court facility is 204' X 120'. The court consists of chain link fence around the exterior of the facility, one net per court and a paved interior surface.
- **Utility Facility, Major** – Major Utility Facilities include, but are not limited to: water towers, wastewater storage facilities, sewer lift stations, regional stormwater facilities, electrical substations, telecommunication facilities and other similar utility facilities that serve more than one neighborhood or subdivision.
- **Utility Facility, Minor** – Minor Utility Facilities include, but are not limited to: Public or private utility distribution and collection lines, rainwater dispersion facilities, stormwater ponds, rain gardens and other similar facilities.
- **Utility Permit** – The plans, profiles, cross sections, elevations, details, and supplementary specifications signed by a licensed professional engineer and approved by the City that shows the location, character, dimensions, and details of the work to be performed. See

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*also* Black Diamond Engineering Design and Construction Standards (Exhibit “E”), Section 1.2 entitled “Plans.”

- **Villages MPD, The** – The master planned development entitled “The Villages” approved by City of Black Diamond ordinance 10-946 dated September 20, 2010.
- **Village Center** – The Villages Center consists of the mixed use Development Parcels shown on the MPD Site Plan (attached hereto as Exhibit “A”).
- **Villages Property** – The real property described and visually depicted in Exhibit “B” and to which the MPD Permit Approval applies.
- **WSFFA** – Water Supply and Facilities Funding Agreement dated August 11, 2003, as amended by the First Addendum dated July 22, 2004.



## **15.0 GENERAL PROVISIONS**

### **15.1 BINDING EFFECT & VESTING**

This Agreement constitutes and shall be recorded as a covenant running with the land, benefiting and burdening the Project Site. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City.

Pursuant to MPD Condition of Approval No. 159 of the MPD Permit Approval and per the Pre-Application and Development Agreement between the Master Developer and City dated April 16, 2009, the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009, the date the moratorium imposed by the City pursuant to Ordinance No. 08-885, was lifted by the City Council's adoption of Ordinance No. 09-913. All Development within The Villages MPD shall be implemented through Implementing Projects. The Implementing Projects of The Villages MPD shall be vested to and governed by the applicable BDMC provisions and other City standards in effect as of the date of the MPD Permit Approval. The applicable codes and substantive standards are included as Exhibit "E" and the MPD Permit Approval is included as Exhibit "C". Pursuant to BDMC 18.98.195(B) (Exhibit "E"), vesting as to stormwater regulations shall be on a Phase by Phase basis as outlined in Section 7 of this Agreement. Pursuant to BDMC 18.98.195(C) (Exhibit "E"), vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis as outlined in Section 13.6 of this Agreement. Updated building codes will apply pursuant to Subsection 12.8.1.

In accordance with RCW 36.70B.180, during the Build-Out Period the City shall not impose upon The Villages MPD new or additional development standards except as set forth in this Agreement or to the extent required by a serious threat to public health and safety. Provided, however, that this Agreement can be amended during the Build-Out Period in accordance with the procedures in Section 10 of this Agreement and RCW 36.70B.170 through RCW 36.70B.210. Amendments of the MPD Permit Approval or this Agreement pursuant to Section 10 of this Agreement do not affect vesting.

## **15.2 DUTIES OF MASTER DEVELOPER**

Pursuant to Condition of Approval No. 6 of the MPD Permit Approval, a single Master Developer (or Master Developer Transferee) shall be maintained throughout the life of this Agreement. The Master Developer shall function as a single point of contact for City billing purposes, shall function as a single authority for Agreement revisions and modifications, shall provide to the City proof of Master Developer approval of all Implementing Project applications (except building permits) filed by other parties prior to or with submittal to the City, and shall be responsible for distributing Development Agreement entitlements and obligations and administering such.

## **15.3 ASSIGNMENT**

The parties acknowledge that the Development of The Villages MPD likely will involve sale, conveyance or assignment of portions of the Project Site to third parties who will own, develop and/or occupy portions of the Project Site and buildings thereon. BD Village Partners, LP shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement or in The Villages MPD to a Master Developer Transferee acquiring an interest or estate in all or a portion of the Project Site, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure; provided: (i) BD Village Partners gives the City thirty (30) days prior written notice of such assignment or transference; and (ii) BD Village Partners provides the City with a copy of the executed assignment or transference document within ten (10) business days of execution. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee assumes the obligations herein pertaining to the property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and BD Village Partners, LP shall thereupon be deemed released of liability under this Agreement for the portion of the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that BD Village Partners, LP shall remain obligated for any outstanding mitigation measures set forth in this Agreement or in the MPD Permit Approval as of the date of transfer or assignment that are not transferred or

assigned. BD Village Partners, LP shall also remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Villages Property still owned by BD Village Partners, LP. BD Village Partners shall advise prospective transferees or assignees that obligations of this Agreement may apply to the property upon transfer or assignment.

#### **15.4 GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

#### **15.5 SEVERABILITY AND WAIVER**

If any portion of this Agreement is determined by a court of law to be unenforceable or invalid, then the remaining portions of this Agreement shall remain in effect.

#### **15.6 AUTHORITY**

Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

#### **15.7 EXHIBITS**

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this agreement. The exhibits are:

Exhibit "A" – Project Boundaries and MPD Site Plan

Exhibit "B" – Legal Description and Parcel Map

Exhibit "C" – MPD Permit Approval

Exhibit "D" – Summary of Prior Agreements

Exhibit "E" – City of Black Diamond Municipal Code

Exhibit "F" – Traffic Monitoring Plan

Exhibit "G" – Constraint Maps

- Exhibit “H” – MPD Project Specific Design Standards and Guidelines
- Exhibit “I” – High Density Residential Supplemental Design Standards and Guidelines
- Exhibit “J” – Construction Waste Management Plan
- Exhibit “K” – MPD Phasing Plan
- Exhibit “L” – Excerpts from Chapter 3 of MPD Permit Application
- Exhibit “M” – Mine Hazard Release Form
- Exhibit “N” – Villages MPD Funding Agreement
- Exhibit “O” – Stormwater Monitoring
- Exhibit “P” – Green Valley Road Measures
- Exhibit “Q” – Maple Valley Transportation Mitigation Agreement
- Exhibit “R” – Covington Transportation Mitigation Agreement
- Exhibit “S” – Potential Expansion Areas
- Exhibit “T” – Impact Fees for Fire Protection Facilities dated 1-13-2011

Amendments to Exhibits H, J, K, M, N, Q and R shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2. Many of the Exhibits to this Agreement, as well as some of the figures contained in this Agreement’s text are in color or include other features that provide clear illustration; however, this format is not yet acceptable by the King County Recorder’s Office for permanent recording. Accordingly, the parties agree that following mutual execution of this Agreement, any non-recordable format Figures and Exhibits will be replaced in the Agreement with a page stating: “Figure X-Y [Exhibit X] is kept on file with the City of Black Diamond and is available for public review at the Community Development Department during business hours.”

### **15.8 TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

### **15.9 INTERPRETATION**

This Agreement has been reached as a result of arm's length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement.

### **15.10 INTEGRATION**

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other provision or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

### **15.11 NO THIRD-PARTY BENEFICIARY**

This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement, with the sole exception of the City of Maple Valley as described in subsection 12.10.4.

### **15.12 OTHER NECESSARY ACTS**

The parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement.

### **15.13 REMEDIES**

The parties may, in addition to any other rights or remedies, take action to cure, correct, or remedy any default; enforce any covenant or agreement herein; enjoin any threatened or attempted violation thereof; enforce by specific performance the obligations and rights of the parties hereto; or obtain any remedies consistent with the foregoing and the purposes of this Agreement.

**15.14 NOTICE**

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: \_\_\_\_\_, Mayor  
City of Black Diamond  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Mike Kenyon  
City Attorney  
11 Front Street S  
Issaquah, WA 98027-3820  
Facsimile: (425) 392-7071

BD Village Partners: Brian Ross  
BD Village Partners, L.P.  
10220 NE Points Drive, Suite 310  
Kirkland, WA 98033  
Facsimile: (425) 898-2139

Nancy Bainbridge Rogers  
Cairncross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Facsimile: (206) 587-2308

**15.15 COUNTERPARTS**

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

**15.16 TERM**

“Build-Out” Period of fifteen (15) years following the date of the MPD Permit Approval is established for all the Development and construction of uses in The Villages MPD as authorized in BDMC 18.98.195(A) (Exhibit “E”) and RCW 36.70B.170(3)(i). The Build-Out Period may be extended up to an additional five years for any Phase of The Villages MPD pursuant to BDMC 18.98.195(E) (Exhibit “E”).

The Term of this Agreement shall be from the date written in the first paragraph of this Agreement till the expiration of the Build-Out Period, as may be extended.

*[Signatures appear on the following page]*

**The Villages Master Planned Development  
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CITY OF BLACK DIAMOND

BD VILLAGE PARTNERS, L.P., a Washington limited partnership

\_\_\_\_\_  
\_\_\_\_\_, Mayor

By: Yarrow Bay Development, LLC, a Washington limited liability company, its General Partner

Attest:

By: BRNW, Inc., a Washington corporation, its Member

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_  
Brian Ross, President

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney



